86-558

Supreme Court, U.S.
FILED
SEP 22 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1985

In re: MANOA FINANCE COMPANY, INC.
a Hawaii Corporation
Debtor

CHARLES R. KLENSKE,
Trustee in reorganization,
Chapter 11,
Plaintiff-Appellee,

vs.

GEORGE W. H. GOO,
ROBERT S. TERAMOTO, et al.,
Defendants,

and

HIROTOSHI YAMAMOTO
Defendant-Appellant.

Ninth Circuit Court
No. 84-2807

Hawaii District Court
No. CV 83-0222
BK 83-00065

On Writ of Certiorari to the
United States Court of Appeals
For the Ninth Circuit

PETITION FOR CERTIORARI

HIROTOSHI YAMAMOTO, pro se
85-175 Farrington Highway, B426
Waianae, Hawaii 96792

Phone: (808) 6968531

For Defendant-Appellant

13pp

QUESTION PRESENTED

Whether Act 187 Session Laws of Hawaii 1985 violates the Constitution and the Uniform Bankruptcy Laws of the United States, by enabling the Chapter 11 Trustee of Manoa Finance Company to divest all the residual assets of the defunct corporation to the State sponsored Thrift Guaranty Corporation at the expense and total exclusion of the corporation's equity holders.

Whether the United States Court of Appeals for the Ninth Circuit had erred in its failure to consider, on appeal, the *new evidence* of Act 187, Session Laws and Hawaii 1985, and its reversal of the original impact of the partial summary judgment of $1.6million obtained by the Trustee against Defendant-Appellant.

Since Appellant controls 100% of the Common Stock of Manoa Finance Company, he was the prime beneficiary of the Estate of said company, and so the original impact of the partial summary judgment would have been innocuous, since Manoa Finance Company, closed for failure to meet the State required 10 to 1 debt to capital ratio, had nevertheless, assets in excess of liabilities of more than $4million, with real estate holdings estimated at $17million above book value. It was a $21million corporation seeking Chapter 11 refuge only because of the run incited by the State's closing.

TOPICAL INDEX

Page

QUESTIONS PRESENTED i
TOPICAL INDEX ii
TABLE OF AUTHORITIES iii
OPINIONS BELOW 1
JURISDICTION 2
REQUIRED CERTIFICATIONS (Rule 28-4(c)) 2
STATEMENT OF THE CASE 2
ARGUMENT 3
CITATIONS 4
CONCLUSION 6

APPENDIX

Order Granting Partial Summary Judgment—King ..... Exh. A-1 to A-6

Judgment Affirmed on Appeal—Ninth Circuit ..... Exh. B-1 to B-6

Petition for Rehearing Denied; Suggestion for Rehearing En Banc, Rejected ..... Exh. C

Notice of Appeal ..... Exh D-1 to D-2

Yamamoto, sole owner of Manoa Enterprise, the holding company for Manoa Finance Co. ..... Exh. E-1 to E-8

Chapter 11—Reorganization—$4million of assets in excess of liabilities ..... Exh. F-1 to F-4

Trustee's estimate of real estate value—$17million above bookvalue ..... Exh. G-1 to G-3

Act 187, S.L.H. 1985 ..... Exh. H-1 to H-7

Trustee's Reorganization Plan ..... Exh. I-1 to I-17

Confirmation of Trustee's Reorganization Plan—Judge King ..... Exh. J-1 to J-4

Certificate of Service

TABLE OF AUTHORITIES

Page

DOWD BOX COMPANY v. COURTNEY, 368 U. S. 502 (1962) 4

KALB v. FEUERSTEIN, 308 U. S. 433 (1940) 5

MOSES TAYLOR, 71 U. S. (4 Wall.) 478 (1967) 4

U. S. CONSTITUTION

Article I, Sec. 8, cl 4 5

STATUTES

28 U.S.C.A. §1334 (West Supp, 1984) 5

28 U.S.C. §2101(c) 2

28 U.S.C. §2403(b) 2

ACT 187 S.L.H. 1985—Exhibits H-1 to H-12

OTHER REFERENCES

Pub L. No. 95-598 (Bankruptcy Code) 5

Pub L. No. 98-353 (Bankruptcy Amendments and Federal Judgeship Act of 1984) 5

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1985

CHARLES R. KLENSKE, Trustee in Reorganization for Manoa Finance Co. Inc.

Plaintiff-Appellee

vs.

HIROTOSHI YAMAMOTO,

Defendent-Appellant.

PETITION FOR CERTIORARI

OPINIONS BELOW

1. Order by District Court Judge Samuel P. King, granting Plaintiff, partial summary judgment of $1,666,309.28 against Defendant. (*Appendix—Exhibit A-1 to A-7*)
2. On appeal, judgment affirmed by the United States Court of Appeals for the Ninth Circuit (*Appendix—Exhibits B-1 to B-9*)
3. Petition for Rehearing is denied and the Suggestion for Rehearing En banc is rejected on *June 24, 1986* (*Appendix —Exhibit C*)

JURISDICTION

1. Notice of Appeal filed *July 7, 1986.* (*Appendix—Exhibits D-1 and D-2*)
2. Jurisdiction is invoked under *28 U.S.C.* §*2101(c)*

REQUIRED CERTIFICATIONS (Rule 28-4c)

Because *28 U.S.C.* §2403(b) may be applicable, Certification of Petition shall be made to:

Corinne A. Watanabe
Attorney General
State of Hawaii
State Capitol
Honolulu, Hi 96813

and

Mr. Larry S. Matsuda,
President,
Thrift Guaranty Corporation of Hawaii
1001 Bishop St.
Bishop Square, Bishop Towers
Suite 985
Honolulu, Hi 96813

STATEMENT OF THE CASE

1. Manoa Finance Co. is totally owned by Manoa Enterprise, Inc. a holding company which in turn, is totally owned by Defendant-Appellant, Yamamoto. (*Appendix, Exhibit E-9*)
2. Manoa Finance Co. was closed by the State because it had breached the ten to one, debt to capital ratio, required of all industrial loan companies.
3. The resulting "run" caused by the closing forced Manoa Finance Company to seek refuge under Chapter 11, Reorganization. (*Appendix, Exhibit F-1*)
4. At the time of closing, Manoa Finance Company was not in default as to any interest or withdrawal payments for depositors. Nor were there any demands for payments by

depositors. Nor were there any demands for payments by creditors.

5. At the time of closing, Manoa Finance Company's assets were in excess of liabilities by $4million plus. (*Appendix, Exhibit F-4*)
6. Manoa Finance Company's real estate was estimated by the Trustee to be $17million above book value. And thus it was a $21million company seeking refuge under Chapter 11. (*Appendix, Exhibit G-3*)
7. Judge King's distortion of the $17 million and $4 million in assets as liabilities. *(See Footnote on Exhibit B-5)*

ARGUMENT

1. Since Appellant Yamamoto controls 100% of the Common Stock of Manoa Finance Company and is the prime beneficiary of the Estate of Manoa Finance Company, the partial summary judgment of $1,666,309.28 would inure back to him. The Trustee's partial summary judgment therefore appeared frivolous and innocuous at that time, *November 13, 1984* (*Exhibit A-3*)
2. However, on *June 3, 1985* when Act 187 S.L.H. 1985 took effect *(Exhibit H-7)* the true purpose and intent of the Trustee's securing the Partial Summary Judgment against appellant became evident. Excerpts from Section 7 of the Act is as follows:

> "SECTION 7. The assets . . . of Manoa Finance . . . shall be available after satisfaction to the respective respective liens of the State and the member companies provided pursuant to Section 5 for repayment of the loans made by the State to the guaranty corporation in the years 1977 to 1983 . . . (*Underscore supplied*) Note: MFC was closed in 1983.

3. To implement Act 187, S.L.H. 1985, the Trustee's Reorganization plan has the following excerpts:

> "C-3 *Securities of MFC.* As of the Effective Date the outstanding common and preferred stock of MFC shall be cancelled." *(Exhibit I-6)*

"Any property remaining after all disputes over claims have been determined and all administrative and other claims have been paid in full shall be returned to TGC." (Thrift Guaranty Corporation). (*See bottom of I-8 and top of I-9*)

4. The Trustee's reorganization plan implementing Act 187, S.L.H. 1985 was confirmed by Judge King on *Oct. 2, 1985.* (*Exhibit J-4*)
5. The "new evidence" of Act 187 was not argued in the original appeal, but was contained in the Petition for Rehearing and Suggestion for Rehearing En Banc dated February 14, 1986.
6. The gravamen of the appeal rests therefore with the consideration of the constitutionality of Act 187, S.L.H. 1985. Clearly the Constitution and the laws of the United States relating to bankruptcy broach of no intervention, interference, or even parallel jurisdiction by or with the states.

CITATIONS

1. In *Moses Taylor,* 71 U. S. (4 Wall.) 478 (1967), it was established that beginning with the First Judiciary Act enacted by Congress in 1789, in *certain instances* the jurisdiction of the Federal Courts shall be exclusive of the several states.
2. Clarification of the "certain instances" was made in *Dowd Box Company v. Courtney,* 368 U. S. 502 (1962), where Justice Steward delcared:

> This Court's approach to the question of whether Congress has ousted State Courts of jurisdiction was enunciated by Mr. Justice Bradley in *Claflin v. Houseman* (citation omitted) and has remained unmodified through the years. 'The general question, whether State courts can exercise concurrent jurisdiction with the Federal courts in cases arising under the Constitution, laws, and treaties of the United States, has been elaborately discussed . . . (and) the result of these discussions has in our judgment been . . . to affirm the jurisdiction, where it is not excluded by express pro-

vision, or arising from the nature of the particular case."

Id. at 508.

3. Bankruptcy is one of the specific cases where Congress has made federal jurisdiction exclusive. Under 28 U. S. C. §1334 (West Supp. 1984), it provides:

> The district courts shall have original jurisdiction, exclusive of the courts of the States, of all matters and proceedings in bankruptcy. (underscore supplied).

Also, under Article I, Sec. 8, cl. 4 of the United States Constitution, Congress was given the power "to establish uniform laws on the subject of Bankruptcies throughout the United States."

4. In compliance with the above mandate, Congress enacted the Bankruptcy Reform Act of 1978, as amended, Pub. L. No. 95-598 ("Bankruptcy Code") and the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353.
5. In *Kalb v. Feuerstein,* 308 U. S. 433 (1940), protection is extended to the person and property of a debtor whom the bankruptcy law protects.

The Supreme Court stated:

> It is generally true that a judgment by a court of competent jurisdiction bears a presumption of regularity and is not thereafter subject to collateral attack. But, Congress, because its power over the subject of bankruptcy is plenary, may by specific bankruptcy legislation create an exception to that principle and render judicial acts taken with respect to the person or property of a debtor whom the bankruptcy law protects nullities and vulnerable collaterally. (footnote omitted.)

Id. at 438-39.

In absolute and unequivocal finality on the subject, the Court continued by stating that:

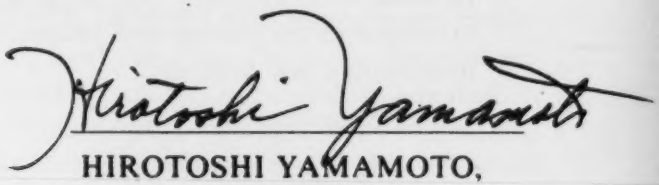
> The States cannot, in the exercise of control over local laws and practice, vest State courts with power to violate the supreme law of the land. The Constitution grants Congress exclusive power to regulate bankruptcy and under this power Con gress can limit the jurisdiction which courts, State or Federal, can exercise over the person and property of a debtor who duly invokes the bankruptcy law. (Underscore supplied.)

Id. at 419

CONCLUSION

It is respectfully submitted that Act 187, S.L.H. 1985 be declared unconstitutional insofar as those sections which denies the equity holder of their just due. And therefore the case should be remanded back to the lower courts for the determination of the compensable and recoverable costs and damages.

DATED: Honolulu, Hawaii, September 22, 1986



HIROTOSHI YAMAMOTO,
pro se for Appellant.

APPENDIX

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FILED
UNITED STATES BANKRUPTCY COURT
DISTRICT OF HAWAII
NOV 1 - 1984
at 9 o'clock and 34 min. A.M.
DOROTHY K. IPPONGI, CLERK

ENTERED ON DOCKET
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LODGED
NOV - 9 1984
UNITED STATES BANKRUPTCY COURT
DISTRICT OF HAWAII

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

MANOA FINANCE COMPANY, INC., a Hawaii corporation,	)	BK. NO. 83-00065
	)	ADV. PROCEEDING
	)	NO. 83-0222
Debtor.	)	

I Hereby Certify That A
Copy Was Mailed To ...
SEC(2), IRS
At Their ... Respective
Address On ... 11/19/84
By ...

Exhibit A-1

CHARLES R. KLENSKE, Trustee in Reorganization for MANOA FINANCE COMPANY, INC.,	)	ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT
Plaintiff,	)	
vs.	)	
HIROTOSHI YAMAMOTO, GEORGE W. H. GOO, ROBERT S. TERAMOTO, MASAYUKI TOKIOKA, SHIZUKO YAMAMOTO, SAKAE TAKAHASHI, ELIZABETH TAKAHASHI, MAKAHA LAUNDRY, INC., MAKAHA REEF, INC., TAKAHASHI-YAMAMOTO JOINT VENTURES, SSK INVESTMENTS, INC. and ASIAN AMERICAN MEDICAL CLINIC OF SAN FRANCISCO,	)	
Defendants.	)	

ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff CHARLES R. KLENSKE, Trustee in Reorganization for Manoa Finance Company, Inc.'s (hereinafter referred to as "Plaintiff") Motion for Partial Summary Judgment having duly come on for hearing before the Honorable Samuel P. King, on September 25, 1984, and James A. Kawachika having appeared for Plaintiff, Craig G. H. Yim and Jay T. Suemori for Defendant HIROTOSHI YAMAMOTO, David Arakawa for Defendant MASAYUKI TOKIOKAa and Thomas

J. Wong for Defendants SAKAE TAKAHASHI and ELIZABETH TAKAHASHI, and the Court having read the memoranda and heard the arguments of counsel and being fully advised in the premises and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Plaintiff's Motion for Partial Summary Judgment be and the same is hereby granted;

2. Plaintiff have judgment against Defendant HIROTOSHI YAMAMOTO in the total amount of $1,666,309,20 as of October 15, 1984 plus the applicable per diem and interest amounts thereafter, which amount is comprised as follows:

i. *Promissory Note Dated 12/30/68*

Principal	$ 69,018.48
Interest as of 10/15/84	$ 32,263.85
Total as of 10/15/84	$101,282.33
Per diem after 10/15/84	$ 11.35

ii. *Promissory Note Dated 12/31/69*

Principal	$ 93,000.00
Interest as of 10/15/84	$ 50,719.95
Total as of 10/15/84	$143,719.95
Per diem after 10/15/84	$ 17.83

iii. *Promissory Note Dated 12/1/70*

Principal	$ 30,000.00
Interest as of 10/15/84	$ 15,192.51
Total as of 10/15/84	$ 45,192.51
Per diem after 10/15/84	$ 5.34

iv. *Promissory Note Dated 12/17/70*

Principal	$ 15,000.00
Interest as of 10/15/84	$ 7,012.05
Total as of 10/15/84	$ 22,012.05
Per diem after 10/15/84	$ 2.47

v. *Promissory Note Dated 12/22/70*

Principal	$395,000.00
Interest as of 10/15/84	$184,648.95
Total as of 10/15/84	$579,648.95
Per diem after 10/15/84	$ 64.93

vi. *Promissory Note Dated 12/31/70*

Principal	$100,000.00
Interest as of 10/15/84	$ 46,746.60
Total as of 10/15/84	$146,746.60
Per diem after 10/15/84	$ 16.44

vii. *Promissory Note Dated 12/30/71*

Principal	$130,000.00
Interest as of 10/15/84	$ 60,770.55
Total as of 10/15/84	$190,770.55
Per diem after 10/15/84	$ 21.37

viii. *Promissory Note Dated 1/3/73*

Principal	$ 70,000.00
Interest as of 10/15/84	$ 35,345.65
Total as of 10/15/84	$105,345.65
Per diem after 10/15/84	$ 11.51

ix. *Promissory Note Dated 1/28/74*

Principal	$ 25,000.00
Interest as of 10/15/84	$ 11,686.65
Total as of 10/15/84	$ 36,686.65
Per diem after 10/15/84	$ 4.11

x. *Promissory Note Dated 12/31/75*

Principal	$ 33,072.02
Interest as of 10/15/84	$ 15,460.08

Total as of 10/15/84	$ 48,532.10
Per diem after 10/15/84	$ 5.44

xi. *Promissory Note Dated 12/18/81*

Principal	$ 18,406.62
Interest as of 10/15/84	$ 3,868.40
Total as of 10/15/84	$ 22,275.02
Per diem after 10/15/84	$ 6.05

xii. *Promissory Note from Japan Center Car Wash, Inc. to National Braemar, Inc.*

Principal	$151,499.53
Interest as of 10/15/84	$ 52,712.39
Total as of 10/15/84	$204,211.92
Per diem after 10/15/84	$ 41.51

xiii. *Advance to National Braemar, Inc.*

$ 19,885.25;

Plus applicable interest rate

and,

3. Pursuant to Rule 7054(a) of the Rules of Bankruptcy Procedure and Rule 54(b) of the Federal Rules of Civil Procedure, the Court expressly determines that there is no just reason for delay and expressly directs the entry of a final judgment on Counts VIII and XVII of the Complaint in favor of Plaintiff and against Defendant HIROTOSHI YAMAMOTO in the aforesaid amount and it is hereby ordered that the said judgment order is a final judgment as to Defendant HIROTOSHI YAMAMOTO.

DATED: Honolulu, Hawaii, November 13, 1984.

/s/ Samuel P. King

Samuel P. King
JUDGE OF THE
ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

CRAIG G. H. YIM
/s/ JAY T. SUEMORI
Attorneys for Defendant
Hirotoshi Yamamoto

/s/ DAVID ARAKAWA
Attorney for Defendant
Masayuki Tokioka

/s/ THOMAS J. WONG
Attorney for Defendants
Sakae Takahashi and Elizabeth Takahashi

Manoa Finance Company, Inc., Debtor; Charles R. Klenske, Trustee in Reorganization for National Finance Company Inc. v. Hirotoshi Yamamoto, et al, BK No. 83-00065; Adv. Proceeding No. 83-0222

Order Granting Plaintiff's Motion for Partial Summary Judgment

Exhibit A-6

For Publication

FILED
FEB - 4 1986
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH DISTRICT

In re: MANOA FINANCE COMPANY, INC., *Debtor.*	)	No. 84-2807
CHARLES E. KLENSKE, Trustee in reorganization, *Plaintiff-Appellee,*	)	D.C. No. CV 83-0222 BK 83-00065
vs.	)	
GEORGE W. H. GOO; ROBERT S. TERAMOTO, et al., *Defendants*	)	OPINION
and	)	
HIROTOSHI YAMAMOTO, *Defendant—Appellant.*	)	

Appeal from the United States Bankruptcy Court
for the District of Hawaii
Hon. Samuel P. King, District Judge, Presiding
Argued and Submitted November 19, 1985
Honolulu, Hawaii

BEFORE: SKOPIL, FLETCHER, and ALARCON, Circuit Judges.

Exhibit B-1

PER CURIAM:

Hirotoshi Yamamoto appeals from a partial summary judgment granted by District Judge King sitting as the bankruptcy court. Yamamoto initially claimed we lacked jurisdiction over this appeal and he claims that Judge King should be disqualified from presiding over the adversary proceedings in this case. We affirm the partial summary judgment.

BACKGROUND

Manoa Finance Co. (MFC) is an Hawaiian corporation licensed to do business as an industrial loan company. The State of Hawaii moved successfully in state court to have a receiver appointed due to MFC's violations of Hawaii's Industrial Loan Companies Act. The next day, MFC filed a voluntary petition for Chapter 11 Reorganization in the United States Bankruptcy Court for the District of Hawaii. The bankruptcy judge recused himself, and District Judge King assumed the administration of the estate. The papers in the case were filed in bankruptcy court, though some have district court headings.

Klenske was appointed Trustee in Reorganization for MFC and filed a complaint alleging a variety of wrongdoings stemming from transactions involving Yamamoto, other defendants, and MFC and its subsidiaries. Yamamoto filed an answer. Klenske moved for summary judgment on two counts of the complaint and Yamamoto filed a memorandum in opposition. Both counts involved debts owed to MFC by Yamamoto. A hearing was held before Judge King and he granted summary judgment on both counts.

The appeal was certified pursuant to Fed. R. Civ. P. 54(b). At oral argument before this court, Yamamoto conceded that he is responsible for the debts in question.

DISCUSSION

I. APPELLATE JURISDICTION

Klenske claimed in his brief that this court has no jurisdiction to hear this case because it is a direct appeal from a

decision of a bankruptcy court. While he attempted to waive this claim at oral argument, we nonetheless are obligated to decide jurisdictional issues. *Pizza of Hawaii, Inc. v. Shakey's Inc. (Matter of Pizza of Hawaii, Inc.)*, 761 F.2d 1374, 1377 (9th Cir. 1985)

The Bankruptcy Amendments and Federal Judgeship Act of 1984 (1984 Act), Pub. L. 98-553, removed the statutory authorization of direct appeals from bankruptcy courts to the courts of appeal. *SEC v. Danning (In re Carter)*, 759 F.2d 763, 764 (9th Cir. 1985). However, though Judge King was sitting as the bankruptcy court, he is a district judge.

Under the statutory scheme in effect before the 1978 Bankruptcy Amendments, we held that we had jurisdiction over appeals from district judges sitting in bankruptcy even though we would not have jurisdiction over the same appeal from a decision of a bankruptcy referee. *See Ellis v. Corey (Matter of Ellis)*, 674 F.2d 1238, 1245–46 n.9 (9th Cir. 1982). We find no reason to act differently under the 1984 Act.

A major purpose of the 1984 Act was to deal with the problems caused when the Supreme Court removed jurisdiction from the bankruptcy courts in *Northern Pipeline Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982). *See* 1984 U.S. Code Cong. & Admin. News 576, 579, 587, 590. Though the legislative history gives no indication of the specific reason that our jurisdiction over direct appeals from the bankruptcy court was removed, it seems logical to assume that it related to the concern over the the proper role of non-Article III judges. *See* 1984 U.S. Code Cong. & Admin. News of 587 (remarks of Senator Dole), 590 (Remarks of Senator Hatch). Congress's concern may have been to prevent an appeal to this court before an Article III judge had ruled on an issue. This concern is not present if the original decision was made by an Article III district judge.

In addition, under the new scheme, if the appeal is not taken to this court, it would go to the district court of the district that includes the bankruptcy court, 28 U.S.C. § 158(a), or to a bankruptcy appellate panel. 28 U.S.C. § 158(b). It does not make sense to have appeals from a decision of an Article III judge heard by a panel of Article I judges, or by another judge of that judge's district court. We accordingly hold that we will

treat an appeal from the decision of a district court judge sitting as a bankruptcy court as an appeal from a final decision of a district court appealable under 28 U.S.C. § 1291. We have jurisdiction in this case.

II. CONFLICT OF INTEREST

Yamamoto claims that Judge King should have disqualified himself from presiding over the adversary proceedings because he presided over the administrative portions of the case. He asserts that Judge King became too close to the case and to the trustee to remain impartial. 28 U.S.C. § 455 requires the disqualification of federal judges "if a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned." *Sakellar v. Lockheed Missiles and Space Co.*, 765 F.2d 1453, 1457 (9th Cir. 1985); *United States v. Jaramillo*, 745 F.2d 1245, 1248 (9th Cir. 1984), *cert. denied*, 105 S.Ct. 2142 (1985). We have applied the standards of § 455 even when the statute has not been asserted. *Sakellar*, 765 F.2d at 1457.

Though section 455 is stated in terms of a self-enforcing obligaton upon the judge, it may be invoked by a party. *Trotter v. International Longshoremen's and Warehousemen's Union, Local 13*, 704 F.2d 1141, 1144 (9th Cir. 1983) (per curiam); *United States v. Conforte*, 624 F.2d 869, 880 (9th Cir.), *cert. denied*, 449 U.S. 1012 (1980). There is no indication in the record that Yamamoto raised this issue below, but his failure to move for recusal at the trial level does not preclude his raising the issue on appeal. *United States v. Sibla*, 624 F.2d 864, 868 (9th Cir. 1980).

The alleged bias in this case is said to stem from one judge's handling both administrative and adversary matters in the same case. Courts have held that bias and prejudice for the purposes of the statute must stem from an extra-judicial source, not from information gained in the course of the proceeding. *Commercial Paper Holders v. Hine* (*Matter of Beverly Hills Bancorp.*), 752 F.2d 1334, 1341 (9th Cir. 1984); *Trotter*, 704 F.2d at 1144; *United States v. Winston*, 613 F.2d 221, 223 (9th Cir. 1980). Whether this rule should apply with full force is not clear when the claim of bias stems from a bankruptcy

judge's acting in a dual capacity. To the extent a bankruptcy judge must play both administrative and judicial roles, he is an actor as well as an adjudicator; intimate contact with day-to-day affairs of an estate and close contact with the trustee may make objective appraisal difficult and may create the appearance of partiality.

The Bankruptcy Amendments of 1978 were designed in part to address these concerns and to avoid "premature involvement [by the judge] in issues involving fair and objective adjudication." R. Aaron, *Bankruptcy Law Fundamentals* § 4.02 at 4.4 (1984). *Accord* U.S. Department of Justice, Executive Office for U.S. Trustees, *An Evaluation of the U.S. Trustee Pilot Program for Bankruptcy Administration* 1 (1983) (*Evaluation*). While this goal has been realized to some extent, *see Evaluation* at 199, there are situations in which a bankruptcy judge still is involved in an administrative role. *See* R. Aaron, *Bankruptcy Law Fundamentals* § 4.02 at 4.4

We will not second-guess Congress to the extent of finding that this statutory scheme necessarily violates the mandate of section 455. However, we suggest that judges sitting in bankruptcy be especially solicitous in maintaining both the appearance and reality of impartiality when adjudicating matters with which they have had close involvement, erring on the side of recusing themselves when appropriate. In the case before us, we have no difficulty finding that the claims of bias alleged by Yamamoto[1] are specious at best. Disqualification is neither required nor appropriate.

---

[1]Yamamoto claims that the following excerpts from the transcript are evidence of bias:

> "Mr. Yim: I think the records will show that, from the time that the Chapter 11 proceedings were filed back in February of 1983 to now, that the deficits have decreased from I believe somewhere from seventeen million down to four million.
>
> "The Court: I've been very close to what has been happening. Mr. Klenske went out and cancelled out a lot of loans, paid them off, settled them, got rid of the interest payments, reduced the overhead, so naturally he cut it way down. He had some outstanding loans to people; paid them off fifty cents on the dollar; cut the interest payments. He cut it way down."

III. SUMMARY JUDGMENT

We review a grant of summary judgment de novo. *Powell v. Tucson Air Museum Foundation of Pima County,* 771 F.2d 1309, 1311 (9th Cir. 1985). Summary judgment will be upheld if there are no genuine issues of material fact. *State of Alaska v. United States,* 754 F.2d 851, 853 (9th Cir.), *cert. denied,* 106 S.Ct. 333 (1985). Because Yamamoto conceded that the debts in question were due and owing, there are no genuine issues of material fact remaining and we must affirm the summary judgment.[2]

AFFIRMED.

---

* * *

> The Court: There is nothing much to add to what Mr. Kawachika has said. He has covered all the bases. I mean here you have a fellow dealng with himself and saying I gave money to myself on a promissory note and I told myself I didn't have to pay it; and then later on I offered to pay and I told myself, no, you don't have to pay right now. You know it's kind of ridiculous.
>
> "Actually, if he actually was serious about saying all of these were not supposed to be loans, or at least not repayable loans, then he made some taxable income here which puts him in real problem [sic] with the IRS; and, if he didn't have that problem, he might even has an embezzlement problem here."

[2]Yamamoto also raises issues of unclean hands and repevin and addresses numerous allegations made by plaintiff's original complaint. The unclean hands and replevin issues were not raised below and are not related to the counts involved in the summary judgment. Similarly, the other contentions relate to matters still before Judge King. None of these matters is properly before us and they need not be addressed. *See Kline v. Johns-Manville,* 745 F.2d 1217, 1221 (9th Cir. 1984). Yamamoto's contention that our jurisdiction is preempted by the state court proceeding is meritless. Federal bankruptcy proceedings stay state court actions involving the bankrupt estates. 11 U.S.C. § 362(a).

FILED

UNITED STATES COURT OF APPEALS JUN 24 1985

FOR THE NINTH CIRCUIT CATHY A. CATTERSON, CLERK U.S. COURT OF APPEALS

In re: MANOA FINANCE COMPANY, INC., *Debtor.*	)	No. 84-2807
CHARLES E. KLENSKE, Trustee in reorganization, *Plaintiff-Appellee,*	)	D.C. No. CV 83-0222 BK 83-00065
vs.	)	ORDER
GEORGE W. H. GOO; ROBERT S. TERAMOTO, et al., and HIROTOSHI YAMAMOTO, *Defendant—Appellant.*	)	

BEFORE: SKOPIL, FLETCHER, and ALARCON, Circuit Judges.

The panel as constituted above has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

Exhibit C

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: MANOA FINANCE COMPANY, INC., *Debtor.*	No. 84-2807
CHARLES E. KLENSKE, Trustee in reorganization, *Plaintiff-Appellee,*	D.C. No. CV 83-0222 BK 83-00065
vs.	NOTICE OF APPEAL
GEORGE W. H. GOO; ROBERT S. TERAMOTO, et al., and HIROTOSHI YAMAMOTO, *Defendant—Appellant.*	FILED JUL 07 1986 CLERK, U.S. COURT OF APPEALS

NOTICE OF APPEAL

Notice is hereby given of an Appeal to the United States Supreme Court for a Petition for Writ of Certiorari on the Order filed *June 24, 1986.* (Exhibit A)

The basis of the appeal is the unconstitutionality of Act 187, S.L.H. 1985, which was enacted *after* the $1.6million Partial Summary Judgment was determined. And thus it consti-

tutes a "new matter" which should have been considered on appeal. To wit:

1. Act 187, S.L.H. 1985 divested Manoa Finance Company's equity holders, to the favor of the State sponsored Thrift Guaranty Corporation,—*all* of the remainder assets of the Estate of Manoa Finance Company, including the $1.6million Partial Summary Judgment.

2. Since Defendant Yamamoto is the prime beneficiary of the Estate of Manoa Finance Company, without the "new matter" of Act 187, S.L.H. 1985, his indebtedness for the $1.6 million Partial Summary Judgment would have been satisfied by a counter claim or offset to his equity interest in the Estate.

3. Therefore, the appeal for a Writ of Certiorari would be solely for the determination of the constitutionality of Act 187, the new matter in the case. Should Act 187, S.L.H. 1985 be determined to be unconstitutional, the impact of the Partial Summary Judgment on Yamamoto, would be as originally determined.

DATED: Honolulu, Hawaii, July 1, 1985.

/s/ HIROTOSHI YAMAMOTO, pro se

85-175 Farrington Hiway, B426
Waianae, Hawaii 96792

Exhibit D-2

INCORPORATED UNDER THE LAWS OF THE STATE OF HAWAII, JUNE 20, 1977

NUMBER 1

SHARES -100-

MANOA ENTERPRISE, INC.

AUTHORIZED CAPITAL - $1,000.00

THIS CERTIFIES THAT HIROTOSHI YAMAMOTO is the owner of

ONE HUNDRED (100)---------- Shares of the Capital Stock of

MANOA ENTERPRISE, INC., fully paid and nonassessable,

transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

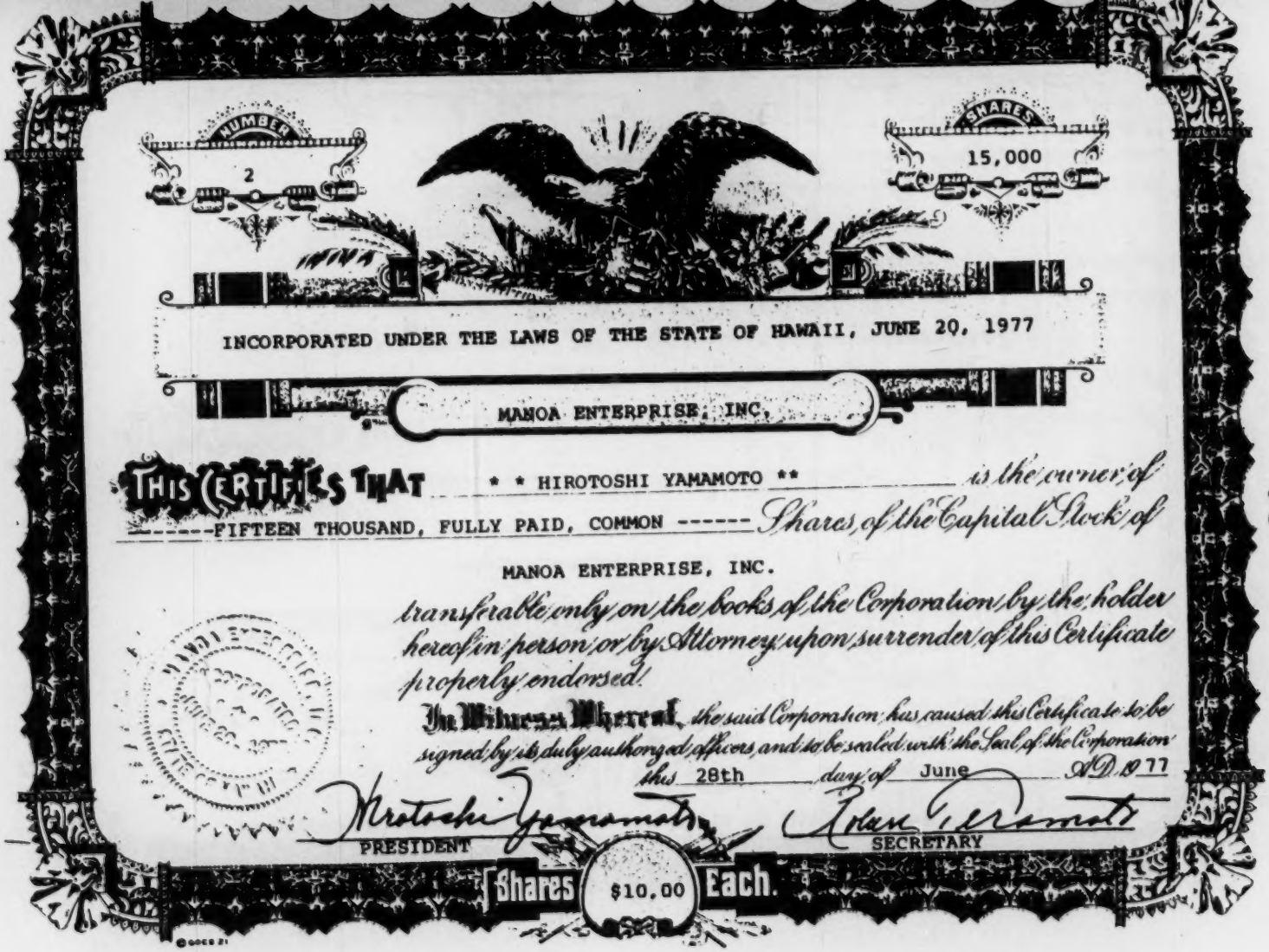
In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation this 21st day of June A.D. 77

PRESIDENT

SECRETARY

Shares $10.00 Each.

Exhibit E-1



NUMBER 2

SHARES 15,000

INCORPORATED UNDER THE LAWS OF THE STATE OF HAWAII, JUNE 20, 1977

MANOA ENTERPRISE, INC.

THIS CERTIFIES THAT * * HIROTOSHI YAMAMOTO ** is the owner of

------FIFTEEN THOUSAND, FULLY PAID, COMMON ------ Shares of the Capital Stock of

MANOA ENTERPRISE, INC.

transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation this 28th day of June A.D. 1977

Hirotoshi Yamamoto
PRESIDENT

Susan E. Yamamoto
SECRETARY

Shares $10.00 Each.

Exhibit E-2

E-2

Exhibit E-3

NUMBER 3

SHARES 14,000

INCORPORATED UNDER THE LAWS OF THE STATE OF HAWAII, JUNE 20, 1977

MANOA ENTERPRISE, INC.

THIS CERTIFIES THAT * * HIROTOSHI YAMAMOTO * * is the owner of

------FOURTEEN THOUSAND, FULLY PAID, COMMON ---- Shares of the Capital Stock of

MANOA ENTERPRISE, INC.

transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation this 28th day of June A.D. 77

Hirotoshi Yamamoto
PRESIDENT

Robert E. Bronstein
SECRETARY

Shares $10.00 Each.

NUMBER 4

SHARES 15,000

INCORPORATED UNDER THE LAWS OF THE STATE OF HAWAII, JUNE 20, 1977

MANOA ENTERPRISE, INC.

THIS CERTIFIES THAT * * HIROTOSHI YAMAMOTO * * is the owner of

-----FIFTEEN THOUSAND, FULLY PAID, COMMON Shares of the Capital Stock of

MANOA ENTERPRISE, INC.

transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation this 28th day of June A.D. 1977

Hirotoshi Yamamoto
PRESIDENT

Robert Weinert
SECRETARY

Shares $10.00 Each.

Exhibit E-4

Exhibit E-5

NUMBER 5

SHARES 10,000

INCORPORATED UNDER THE LAWS OF THE STATE OF HAWAII, June 20, 1977

MANOA ENTERPRISE, INC.

THIS CERTIFIES THAT * * HIROTOSHI YAMAMOTO * * is the owner of

-------- TEN THOUSAND, FULLY PAID, COMMON Shares of the Capital Stock of

MANOA ENTERPRISE, INC.

transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation this 28 day of June A.D. 77

PRESIDENT

SECRETARY

Shares $10.00 Each.

NUMBER 6

SHARES 20,000

INCORPORATED UNDER THE LAWS OF THE STATE OF HAWAII, JUNE 20, 1977

MANOA ENTERPRISE, INC.

THIS CERTIFIES THAT * * HIROTOSHI YAMAMOTO * * is the owner of

------- TWENTY THOUSAND, FULLY PAID, COMMON Shares of the Capital Stock of

MANOA ENTERPRISE, INC.

transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation this 28th day of June A.D. 19 77

Hirotoshi Yamamoto
PRESIDENT

Robert Yamamoto
SECRETARY

Shares $10.00 Each.

Exhibit E-6

Exhibit E-7

NUMBER 7

SHARES 20,000

INCORPORATED UNDER THE LAWS OF THE STATE OF HAWAII, JUNE 20, 1977

MANOA ENTERPRISE, INC.

THIS CERTIFIES THAT * * HIROTOSHI YAMAMOTO * * is the owner of

--------TWENTY THOUSAND, FULLY PAID, COMMON Shares of the Capital Stock of

MANOA ENTERPRISE, INC.

transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation this 28th day of June A.D. 1977

Hirotoshi Yamamoto
PRESIDENT

Robert C. Jeremiah
SECRETARY

Shares $10.00 Each.

NUMBER 8

SHARES 5,900

INCORPORATED UNDER THE LAWS OF THE STATE OF HAWAII, JUNE 20, 1977

MANOA ENTERPRISE, INC.

THIS CERTIFIES THAT ** HIROTOSHI YAMAMOTO ** is the owner of

FIVE THOUSAND NINE HUNDRED, FULLY PAID Shares of the Capital Stock of

MANOA ENTERPRISE, INC.

transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation this 28th day of June A.D. 19 77

PRESIDENT

SECRETARY

Shares $10.00 Each.

Exhibit E-8

DOMESTIC PROFIT CORPORATION
MAKE REMITTANCE PAYABLE TO: DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
FILING FEE $10.00

STATE OF HAWAII
BUSINESS REGISTRATION DIVISION
1010 Richard Street
Mailing Address: P.O. Box 40, Honolulu, HI 96810

ORIGINAL-RETURN BY MARCH 31
PENALTY FOR LATE FILING
YOUR CANCELLED CHECK IS YOUR RECEIPT

ANNUAL CORPORATION EXHIBIT

FOR THE YEAR ENDED DECEMBER 31, 1985
(YEAR)

CORPORATE NAME AND MAILING ADDRESS:

MANOA ENTERPRISE, INC.
2733 EAST MANOA ROAD
HONOLULU, HAWAII 96822

Authorized Capital

Class (Common, Etc.)	Shares	Par Share	Par Total
Common	300,000	$10.00	$3,000,000

Paid-In Capital (CANNOT EXCEED AUTHORIZED CAPITAL)

Class (Common, Etc.)	Shares	Amount
Common	100,000	$1,000,000.

NUMBER OF SHARES HELD IN TREASURY, IF ANY None

. (not shares outstanding held by shareholders)

OFFICERS: (LIST ALL OFFICERS, EVERY CORPORATION, INCLUDING PROFESSIONAL CORPORATIONS. MUST HAVE MINIMUM OF TWO PERSONS AS OFFICERS.)

OFFICE HELD	NAME IN FULL	RESIDENCE ADDRESS
President	Hirotoshi Yamamoto	Makaha Surfside Apt. B426 85-175 Farrington Hwy. Waianae, Hawaii 96792
Sec.-Treas.	Cedric Yamamoto	2671-A Pamoa Road Honolulu, Hawaii 96822

PROFESSIONAL CORPORATIONS: SEE INSTRUCTIONS ON BACK OF THIS FORM.

DIRECTORS: (MAY STATE SAME AS ABOVE IF APPLICABLE. AT LEAST ONE MUST BE A HAWAII RESIDENT.)

RESIDENCE ADDRESS (DO NOT LIST BUSINESS ADDRESS.) (INCLUDE NO. & STREET, APT. NO., CITY, STATE & ZIP CODE)

Hirotoshi Yamamoto	Same as above
Cedric Yamamoto	Same as above

1. SPECIFIC NATURE OF CORPORATE BUSINESS:
Holding Company 100% ownership of Manoa Fin. Co. Inc. stocks
(IF NOT SPECIFIC, EXHIBIT WILL BE REJECTED. IF INACTIVE DURING PERIOD, STATE INACTIVE.)

DECLARATION

I DECLARE UNDER THE PENALTIES SET FORTH IN SECTION 416-94, HAWAII REVISED STATUTES, THAT THIS EXHIBIT HAS BEEN EXAMINED BY ME, AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IS A TRUE, CORRECT AND COMPLETE EXHIBIT, MADE IN GOOD FAITH, FOR THE PERIOD STATED.

DATE *March 10, 1986*

Hirotaka Yamamoto — *President*

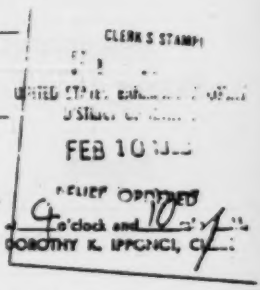
(Signature of authorized corporate officer) (office held)

(If attorney-in-fact signs, attach power of attorney.)

FILE NO.

015-0915-10
015-0915-17

OF COUNSEL:
MUKAI, ICHIKI, RAFFETTO & MacMILLAN
R. PATRICK JARESS
Name GENDEL, RASKOFF, SHAPIRO & QUITTNER
ARNOLD M. QUITTNER
Address 345 Queen Street, Suite 800
Honolulu, Hawaii 96813
Telephone 531-6277
Attorney for Debtor



UNITED STATES BANKRUPTCY COURT FOR THE

HONOLULU **DISTRICT OF HAWAII**

In re

MANOA FINANCE COMPANY, INC.

Case No. 83 00065

VOLUNTARY PETITION
CHAPTER 11 REORGANIZATION

TO THE HONORABLE JUDGES OF THE ABOVE ENTITLED COURT:

1. **Petitioner's post-office address** 2733 East Manoa Road
Honolulu, Hawaii **Zip Code** 96822

2. **Petitioner has resided (or has had his domicile or has had his principal place of business or if a partnership, or corporation, has had its principal assets) within this district for the preceding 180 days (or for a longer portion of the preceding 180 days than in any other district).**

3. **Petitioner is qualified to file this petition and is entitled to the benefits of Chapter 11 of Title 11. United States Code as a voluntary debtor.**

4. ——— petitioner intends to file a plan pursuant to Chapter 11, Title 11. United States Code.

5. (If petitioner is a corporation) Exhibit "A" is attached to and made part of this petition.

WHEREFORE your petitioner prays for relief in accordance with Chapter 11 of Title 11. United States Code.

Signed: _____

☒ Attorney for Petitioner ☐ Petitioner
(Petitioner signs if not represented by attorney)

Address Suite 1748, Pacific Trade Center
190 South King Street
Honolulu, Hawaii 96813

I, HIROTOSHI YAMAMOTO, Director and authorized agent of the corporation named as Petitioner, or a member or an authorized agent of the partnership named as Petitioner in the foregoing Petition, do hereby declare (or certify, verify, or stated), under penalty of perjury** that the statements contained therein are true and correct. (and that the filing of this Petition on behalf of the corporation (or partnership) has been authorized.

Executed this 10th day of February 19 83 at Honolulu, Hawaii

*Include here all names used by debtor within last 6 years.
**This unsworn declaration authorized by 28 USC 1746.

X _____ Hirotoshi Yamamoto
Petitioner

(Unless the petition is accompanied by a list of all the debtor's creditors and their addresses, the petition must be accompanied by a schedule of his property, a statement of his affairs, and a statement of executory contracts, pursuant to Rule 11-11. These statements shall be submitted on official forms and verified under oath.)

OF COUNSEL:
MUKAI, ICHIKI, RAFFETTO & MacMILLAN
R. PATRICK JARESS
Name GENDEL, RASKOFF, SHAPIRO & QUITTNER
ARNOLD M. QUITTNER
Address 345 Queen Street, Suite 800

Honolulu, Hawaii 96813

Telephone 531-6277
Attorney for Debtor

UNITED STATES BANKRUPTCY COURT FOR THE
HONOLULU DISTRICT OF HAWAII

In re

MANOA FINANCE COMPANY, INC.

Case No. _____
EXHIBIT "A" TO PETITION BY CORPORATION

Debtor*

1. **Petitioner's employers' identification number is** 99-0105069

2. **If any of the petitioner's securities are registered under section 12 of the Securities Exchange Act of 1934. SEC file number is** N/A

3. **The following financial data is the latest available information and refers to petitioner's condition on** December 31, 1982

   a. **Total assets $** 72,279,785.70

b. Liabilities:	Amount	Approximate number of holders
Secured debt excluding that listed below	1/	1/
Debt securities held by more than 100 holders:	1/	1/
Secured	1/	1/
Unsecured	1/	1/
Other liabilities, excluding contingent or unliquidated claims	1/	1/

Number of shares of common stock
283,030 (Common Stock)
2,360 (Preferred Stock)

4. Brief description of petitioner's business: Industrial Loan Company licensed and operating pursuant to Chapter 408, Hawaii Revised Statutes

5. The name of any person who directly or indirectly owns, controls, or holds, withpower to vote 25% or more of the voting securities of petitioner is Manoa Enterprise, Inc., a Hawaii corporation

6. The names of all corporations 25% or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by petitioner are Manoa Investment Company, Inc., a National Braemar, Inc.

* Include here all names used by debtor within last 6 years.

CHAPTER 11. EXHIBIT "A" TO PETITION BY CORPORATION, Rev. 10-79

1/ See Balance Sheet of Manoa Finance Company, Inc. attached hereto.

(As of December 31, 1982)

ASSETS

Central Pacific Bank, Commercial Account		$ 2,364,180.19
Central Pacific Bank, Business Savings Account		4,984.36
American Security Bank, Commercial		144,394.05
American Security Bank, Business Savings Account		755.45
Central Pacific Bank, MFC Rental Account		7,392.54
Central Pacific Bank, Waianae Shopping Center Account		6,590.47
American Security Bank, Certificate of Deposit		100,000.00
California First Bank, Certificate of Deposit		200,000.00
Central Pacific Bank, Certificate of Deposit		56,150.00
International Savings & Loan, Certificate of Deposit		30,000.00
First Federal Savings & Loan, Savings Account		2,899.79
American Savings, Money Market Account		100,250.68
Central Pacific Bank, Money Market Account		100,418.70
Honolulu Federal Savings & Loan, Money Market Account		104,998.00
American Savings & Loan, Savings Account		13,009.51
American Security Bank, Savings Account		20,702.41
Honolulu Federal Savings & Loan, Savings Account		5,076.11
International Savings & Loan, Savings Account		1,804.68
State Savings & Loan, Savings Account		6,681.66
Territorial Savings & Loan, Savings Account		725.74
Escrow Fund - Clients Trust Fund		10,911.93
Petty Cash		9,755.86
Personal Loans		724,911.97
Collateral Loans		1,049,172.56
Real Estate Loans		6,643,181.46
Home Improvement Loans		57,797.94
Business Loans		11,657,617.03
Prepaid Expense		247,973.79
Land		12,682,858.05
Improvements	$11,478,911.35	
Res. for Deprn. - Improvements	1,355,352.55	10,123,558.80

Exhibit F3-1

Appliance & Furniture - Rentals	134,328.49	
Res. for Deprn. - Appl. & Furn.	111,662.43	22,666.06
Painting & Artwork		51,694.94
Leasehold Improvements	45,474.79	
Res. for Deprn. - Leasehold Imp.	5,136.89	40,337.90
Furniture & Fixtures	318,039.31	
Res. for Deprn. - Furn. & Fixt.	171,882.21	146,157.10
Automobile	31,726.35	
Res. for Deprn. - Automobile	27,999.99	3,726.36
Accounts Receivable		1,647,834.52
Notes Receivable - James R. Morr		4,605.75
Investments		144,846.03
Investments in Partnerships		34,511.11
Manoa Investment Co. (Subsidiary)		100,000.00
National Braemar, Inc. (Subsidiary)		849,744.39
Pacific Palisades - Leased Fee Land		289,025.00
Momilani - Leased Fee Land		29,150.00
Waipahu - Leased Fee Land		22,288.00
Aliamanu - Leased Fee Land		12,000.00
Agreement of Sale Receivable		21,911,017.02
Mortgage Note Receivable - Farm & Ranches, Inc.		31,995.72
Mortgage Note Receivable - Pablo & Corzo		131,432.07
Purchase Money Second Mortgage - B. Chung & A. Ho		130,000.00
Purchase Money First Mortgage - H. Chung & Co.		180,000.00
TOTAL ASSETS:		$72,279,785.70

LIABILITIES

Notes Payable:		
Banks	$6,292,287.21	
Others	1,221,860.16	$ 7,514,147.37
Mortgage Payable:		
Senior Corp.	2,616,114.26	
Finance Factors	156,367.99	
Honolulu Federal Savings	3,012,605.21	
International Savings	3,145,548.81	
Island Insurance	414,793,15	
Hawaii National Bank	55,176.56	
Pioneer Federal Savings	319,113.89	
State Savings	948,758.65	
Weyerhaeuser Mortgage	298,505.69	
Standard Finance	100,000.00	
Territorial Savings	113,446.84	
Claude Webb	91,329.09	
Hawaii Thrift & Loan	711,687.26	11,983,447.40
Agreement of Sale Payable		265,686.31
Purchase Money Mortgage Payable - National Braemar		501,668.14
Accounts Payable		(29,655.92)
Commission Payable - Hoover Chin		69,000.00
Insurance Premium Withheld		(130.58)
Improvement Assessment Payable		27,039.09
Indebtedness on Investment Certificates		8,709,331.43
Indebtedness on Investment Certificates		209,500.00
Indebtedness on Investment Certificates		2,689,800.00
Indebtedness on Investment Certificates - 6 months		16,147,500.00
Indebtedness on Investment Certificates		669,650.00
Indebtedness on Investment Certificates - 30 months		18,555,000.00
Indebtedness on Investment Certificates - All Savers		64,400.00
Indebtedness on Investment Certificates - 91 days		423,900.00

Taxes Withheld		6,457.90
Rental Deposit Payable		56,703.84
Unearned Interest		55,081.65
Safe Deposit Box Key Deposit		435.76
Collection Accounts		4,850.92
Suspense		1,153.52
TOTAL LIABILITIES:		$67,924,966.83

CAPITAL

Capital Stock, Common		$ 2,830,300.00
Capital Stock, Preferred		236,000.00
Earned Surplus:		
To date ending 12/31/81	$1,822,593.20	
12 months ending 12/31/82	(1,496,482.09)	
	326,111.11	
Less: Dividends Paid - Pfd	4,607.50	321,503.61
Capital Surplus		500,000.00
Reserve for Losses		467,015.26
TOTAL CAPITAL:		$ 4,354,818.87
TOTAL LIABILITIES & CAPITAL:		$72,279,785.70

December 27, 1983

To: DEPOSITORS AND OTHER UNSECURED
CREDITORS OF MANOA FINANCE COMPANY, INC.

The Creditors Committee, recognizing a need to communicate with the depositors and other creditors, has requested the Trustee to provide certain financial information that would be helpful in understanding the current status of the affairs of Manoa Finance Company, Inc.

To that end the following Report provides a resume of significant financial detail relating to the Company from February 9, 1983 through November 30, 1983.

The Reports of necessity brief, but to the point, in revealing what has taken place over the past nine months.

/s/ EDWARD M. YOSHIMASU
Chairman
Creditors Committee

EXHIBIT G-1

MANOA FINANCE COMPANY, INC.

INTERIM REPORT

By C. R. KLENSKE, Trustee

When the bankruptcy petition of Manoa Finance Company, Inc. was filed, the balance sheet of the Company showed Assets of $67,772,889, Liabilities of $63,755,981, and Capital of $4,016,908.

However, this balance sheet, as well as all of the prior financial statements regarding Manoa Finance Company, Inc., was prepared on an unconsolidated basis, which did not take into account the subsidiary companies owned by Manoa Finance Company, Inc.

Manoa Finance Company, Inc. has two wholly owned subsidiaries, Manoa Investment Company, Inc. and National Braemar, Inc. National Braemar, Inc. has a wholly owned subsidiary, Dream Entertainments, Inc.

Consequently, the certified public accounting firm of Alexander Grant & Company was engaged to prepare a consolidated balance sheet of Manoa Finance Company, Inc. and the subsidiary companies, as of February 9, 1983. Upon completion of their balance sheet audit, which eliminates inter-Company loans, and after establishing reserves for doubtful receivables. Total Assets equaled $50,056,793 and Liabilities totaled $66,895,152, with a deficit Capital Account of $16,838,359.

Depositor funds totaled $44,520,225 before addition of accrued interest, which increased the total to $45,043,873.

Significant Asset Book Values, net of reserves for doubtful receivables, allowance for decline in security values, and depreciation were as follows:

Item	Amount	Percent of Total Assets
Cash	$ 1,020,196	2.0%
Receivables, Loans and Agreements of Sale	24,310,982	48.6%
Property and Equipment	13,277.250	26.5%
Land	10,866,621	21.7%
Other Assets	581,744	1.2%
	$50,056,793	100.0%

EXHIBIT G-2

Liabilities aside from the depositors' funds mentioned above were:

Secured Debt	$20,507,978
Agreement of Sale	204,658
Unsecured Creditors and Other Liabilities	1,662,291

While no positive prediction of realizable values can be made until loans are collected and property is sold, the asset base of $50,056,793 is an actual and realistic presentation of the book values of the Consolidated Company. In order of priority, the secured debt and agreements of sale must be paid first, which leaves a margin of $29,344,157 to satisfy the liabilities of Manoa Finance Company to the depositors and other creditors.

Thrift Guaranty Corporation obligation to depositors totaled $35,690,742, of which they have paid $11,219,869 so far to designated depositors. If Thrift Guaranty Corporation meets 100% of its obligation to depositors, there would remain $11,015,422 of liabilities to other depositors and creditors, exclusive of the debt to Thrift Guaranty to be satisfied by the remaining Asset Values of $29,344,157.

As of November 30, 1983, the consolidated secured debt has been reduced by $9,241,155 and Manoa Finance Company secured debt has been reduced by $9,123,580. Additionally, inter-Company secured mortgage debt of $501,668 was paid. The reduction of the secured debt has resulted in a considerable savings in interest cost.

With respect to the real estate holdings of the Consolidated Company, the Trustee has established sales prices totaling $41,117,098, which is $17,870,245 above the net book values shown on the balance sheet. As previously indicated, there is no assurance that these amounts are realizable until sales are made, but to the extent that they are, the excess amounts realized over book value would represent additional sums to satisfy debt to creditors and the subordinated claims of Thrift Guaranty Corporation.

Through November 30, 1983, property sales totaled $496,880 for a net gain of $316,001.

The unimproved land holdings of the Consolidated Company are equal to a book valuation of $3,575,628. These lands are non-income producing and represent a cost burden in the form of both taxes and interest.

(To be made one and twelve copies)
THE SENATE
THIRTEENTH LEGISLATURE, 1985
STATE OF HAWAII

S.B. NO. 1198 S.D. 2 H.D. 1 C.D. 1

ACT 187

A BILL FOR AN ACT

RELATING TO THE INDUSTRIAL LOAN COMPANY GUARANTY ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The purpose of this Act is to eliminate, upon the occurrence of certain events, the requirement that an industrial loan company pay to Thrift Guaranty Corporation of Hawaii the membership assessments provided in sections 408A-9 and 408A-10, Hawaii Revised Statutes. This Act also authorizes a loan by the State of Hawaii to Thrift Guaranty Corporation of Hawaii in order to permit a prompt payment to account holders of industrial loan companies presently in bankcruptcy.

SECTION 2. Section 408A-5, Hawaii Revised Statutes, is amended to read as follows:

"§408A-5 Voting rights of members [.]; and election of directors. Any other law to the contrary notwithstanding, any action by the members of the guaranty corporation, including the election of a board of directors, shall be taken after a vote of the members in accordance with this section. Each member company shall be entitled to one vote plus an additional vote for each [$1,000 of assessments, rounded to the nearest $1,000, which such member shall have actually paid to the guaranty fund in accordance with section 408A-10; provided that no member shall be entitled to more votes than is represented by fifteen per cent of the aggregate assessments. For purposes of any actions taken prior to the initial assessment required by section 408A-10(1), including the initial election of the board,

voting rights of members shall be calculated as if each member had paid the initial assessment required by section 408A-10(1).] $1,000,000 of the member's outstanding thrift account obligations, rounded to the nearest $1,000,000, but no member shall be entitled to more than one representative on the board of directors of the corporation."

SECTION 3. Section 408A-8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Receivers [or], liquidators, or trustees and debtors in possession under the Bankruptcy Code of members shall be entitled to offer the assets of such members for sale to the guaranty corporation or as security for loans from the guaranty corporation. The proceeds of every such sale or loan shall be utilized for the same purposes and in the same manner as other funds realized from the liquidation of the assets of such members. The guaranty corporation with the approval of the bank examiner may make loans on the security of or may purchase and liquidate or sell any part of the assets of a member which [may hereafter be] has been placed in receivership or [adjudicated bankrupt,] made subject to a case under the Bankruptcy Code, but in any case in which the guaranty corporation is acting as receiver of a member, no such loan or purchase shall be made without the approval of a court of competent jurisdiction"

SECTION 4. Section 408A-14, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read as follows:

"(a) [When] If a member has [been adjudicated bankrupt] sought relief under the Bankruptcy Code or has been or is in receivership, the bank examiner shall either:

(1) Direct the guaranty corporation to forthwith pay to each thrift account holder of the member up to $10,000 as specified in section 408A-9; or

(2) Withhold any direction to the guaranty corporation until it has been determined that the proceeds of the receivership or bankruptcy are insufficient to pay up to $10,000 of each thrift account obligation as specified in section 408A-9; upon such determination the bank examiner shall direct the guaranty corporation to pay each such deficiency."

2. Subsection (c) is amended to read as follows:

"(c) Whenever the guaranty corporation makes payments in accordance with section 408A-14(a), it shall be subrogated to all rights of the thrift account holder up to the amount of its payment, and shall be entitled to repayment in full from the estate of the member prior to any distribution to the thrift account holder to whom it has made payment. The guaranty corporation may waive, release, or modify in any way its right to such repayment from the estate of the member with the approval of the bank examiner."

SECTION 5. The sum of $10,500,000, or so much thereof as may be necessary for fiscal years 1985-86 and 1986-87, is appropriated or authorized from the general revenues of the State of Hawaii, or from the issuance of general obligation bonds, or any combination thereof deemed in the best interest of the State. The sums appropriated shall be expended, and the bonds authorized shall be issued by the department of budget and finance for the purposes of this Act.

When requested by the bank examiner, the director of finance shall issue such general obligation bonds as provided by law, the proceeds of which shall be used, together with any general revenues of the State, to make loans to Thrift Guaranty Corporation of Hawaii (the "guaranty corporation"), without interest and to be repaid over a term not to exceed twenty years. The loans may be made, as and when necessary, only to make payments pursuant to a plan of reorganization or liquidation that has been confirmed by the court in the bankruptcy proceedings involving Manoa Finance Company, Inc. ("Manoa Finance"), Great Hawaiian Financial Corporation ("Great Hawaiian"), and Commercial Finance, Limited ("Commercial Finance"); provided that up to $1,000,000 of the amount herein appropriated shall be used only to make payment to thrift account holders of Commercial Finance of up to the guaranty amount provided by section 408A-9, Hawaii Revised Statutes, should a majority of those account holders so request; and provided further that the bank examiner is satisfied that the following conditions have been met:

(1) Such plan of reorganization or liquidation must provide that:

(A) The amount that each thrift account holder of such member company will receive out of the

debtor's estate, when added to any guaranty payments to be made by the guaranty corporation, shall be at least equal to the full guaranty amount required by section 408A-9(a), Hawaii Revised Statutes, less any advance or other payment previously received by such account holder from the guaranty corporation, receiver, trustee in bankruptcy, or debtor in possession; and

(B) Any payments made by the guaranty corporation under the plan of reorganization or liquidation shall be limited to the aggregate of: (i) the amount appropriated under this section; (ii) amounts loaned by member companies specifically for the plan; and (iii) not more than $2,000,000 of other funds belonging to the guaranty corporation.

(2) Such plan must be confirmed within a reasonable time, not to exceed one year following the effective date of this Act, and if any such order of confirmation shall be appealed, such appeal shall have been dismissed not later than sixty days after the end of such one-year period.

(3) Payment to the account holders must commence within a reasonable time, not to exceed ninety days after court confirmation of the plan.

(4) Assets of the guaranty corporation and assets acquired by the guaranty corporation from Manoa Finance or Great Hawaiian shall secure the loans made by the State pursuant to this Act and any loans made by the member companies specifically for the plans of reorganization contemplated by this Act, in the following manner: The bank examiner and the member companies shall mutually designate separate and identifiable pools of such assets. The State shall have a lien, immediately senior to the lien of the member companies, in one such pool of assets, the fair estimated value of which shall not be less than the amount of loans made by the State pursuant to this Act. The member companies shall have a lien, immediately senior to the lien of the State, in the

remaining pool of assets; provided that the pool of assets designated for the member companies shall include, at the minimum, the real estate owned by Manoa Finance. The State and member companies shall each have a junior lien position in the pool of assets in which the other party holds the more senior lien position. If Commercial Finance participates in a plan of reorganization pursuant to this section, the assets of Commercial Finance acquired by the guaranty corporation shall be divided into two pools of assets and shall secure the respective loans of the State and the member companies in the foregoing manner. The guaranty corporation shall sell, collect, or liquidate all assets so acquired and divided as soon as prudently and economically feasible; provided that the terms and conditions of all such sales shall be subject to the prior approval of the bank examiner. The assets of the guaranty corporation not acquired from Manoa Finance and Great Hawaiian shall not be used to pay any of the expenses of such sales, collections, or liquidations; and the net proceeds or recoveries from such sales, collections, or liquidations shall not be used to pay any expenses of the guaranty corporation, except those in connection with such sales, collections, or liquidations. Until substantial completion of the sale, collection, or liquidation of such assets, and based upon the most recent data available, the bank examiner shall provide to the legislature by February 1 of each year a status report regarding such sales, collections, or liquidations.

(5) The guaranty corporation, the State of Hawaii and their officers, agents, directors, and employees, shall have received a full and complete release and discharge, in a manner and form satisfactory to all parties, from or binding upon all the thrift account holders of each company for which such a plan is confirmed, releasing the aforesaid parties from any and all liability with respect to any and all claims directly or indirectly arising out of or in connection

with the account holder's thrift account at such member company or the guaranty of such account. Any and all lawsuits pending against any of the aforesaid parties by thrift account holders shall have been dismissed with prejudice.

(6) The member companies shall have paid when due their annual assessments to be levied in 1985, in accordance with sections 408A-9 and 408A-10, Hawaii Revised Statutes.

Pending the receipt of the funds from the issuance and sale of general obligation bonds, the amount required for any such loan shall be advanced from the general fund of the State. Upon the receipt of the proceeds of the general obligation bonds funds, the general fund shall be reimbursed. The issuance of general obligation bonds in accordance with the authorization of this Act and for purposes of making loans to the guaranty corporation is found and determined to be for a public purpose.

SECTION 6. The obligation of members to pay the annual assessments required under sections 408A-9 and 408A-10, Hawaii Revised Statutes, shall permanently terminate if the bank examiner determines that the conditions have been met for making the loans described in Section 5. The guaranty corporation or any member of the guaranty corporation may apply to the bank examiner for a determination that such conditions have been met and for an order terminating liability for assessment, at any time. The bank examiner shall make an order terminating the assessment or denying such application within thirty days. The guaranty corporation or any member deeming itself aggrieved by the order of the bank examiner under this section, may apply to the Circuit Court of the First Circuit for an order requiring the bank examiner to terminate the member's obligation to pay assessments if the conditions set forth in Section 5 have been met. The court, after citing the bank examiner to show cause why such order shall not be issued, and after a hearing and a determination of whether the conditions set forth in Section 5 have been met, may dismiss such application, order the bank examiner to issue an order terminating assessment liability, or make such further order as may be just. If the bank examiner enters an order terminating the assessment liability of the members, whether voluntarily or

pursuant to court order, the termination shall be effective as of the earlier of the date of the application by the guaranty corporation or a member, as the case may be, or the date of the bank examiner's order. Any levy of assessment made after the effective date shall be rendered void, and any amounts paid on account of the levy shall be returned to the paying member.

SECTION 7. The assets of the guaranty corporation, including assets of Manoa Finance, Great Hawaiian, and Commercial Finance, if Commercial Finance participates in a plan of reorganization pursuant to Section 5, shall be available, after satisfaction of the respective liens of the State and the member companies provided pursuant to Section 5, for repayment of the loans made by the State to the guaranty corporation in the years 1977 to 1983, which shall not be discharged by this Act; provided that assets of the guaranty corporation may be used to pay the full guaranteed amount to the account holders of Commercial Finance under sections 408A-9 and 408A-14, Hawaii Revised Statutes, if Commercial Finance does not participate in a plan of reorganization pursuant to Section 5.

SECTION 8. Any loan made by any member company of the guaranty corporation to the guaranty corporation specifically for the plan of reorganization or liquidation described in Section 5 shall be deemed to constitute a loan complying with the requirements of sections 408-14.5, 408-14.6, and 408-14.7, Hawaii Revised Statutes, or any other provision of state law relating to limitations or requirements on loans by industrial loan companies.

SECTION 9. Statutory material to be replaced is bracketed. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

APPROVED this 3rd day of June 1985

George R. Ariyoshi

GOVERNOR OF THE STATE OF HAWAII

Exhibit H-7

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Attorneys for Trustee

UNITED STATES BANKRUPTCY COURT

DISTRICT OF HAWAII

In re	)
	)
MANOA FINANCE COMPANY, INC., a Hawaii Corporation,	)
	)
Debtor.	)
	)
	)
	)
Case No. 83-00065 (Chapter 11)	)
	)
PLAN OF REORGANIZATION (INCLUDING DISCLOSURE) PROPOSED BY CHARLES R. KLENSKE, CHAPTER 11 TRUSTEE	)

PLAN OF REORGANIZATION (INCLUDING DISCLOSURE STATEMENT) PROPOSED BY CHARLES R. KLENSKE, CHAPTER 11 TRUSTEE

Charles R. Klenske, Chapter 11 Trustee of Manoa Finance Company, Inc., a Hawaii corporation, debtor, hereby proposes the following Plan of Reorganization pursuant to Chapter 11 of title 11 of the United States Code. Pursuant to an order of the United States District Court for the District of Hawaii entered August 27, 1985, this Plan also includes information concerning the Plan. THE TRUSTEE IS NOT REQUESTING A VOTE BY CREDITORS TO ACCEPT OR REJECT THIS PLAN, BECAUSE THE PLAN CONTEMPLATES THE PAYMENT IN FULL OF ALL CLAIMS OF MFC'S DEPOSITORS AND UNSECURED CREDITORS.

ARTICLE I

GENERAL PROVISIONS

A. Definitions

For purpose of this Plan, the following terms have the meanings hereinafter set forth:

A. 1 "Act 187" means Act 187, Session Laws of Hawaii 1985, signed by the Governor of the State of Hawaii on June 3, 1985.

A. 2 "Advance Payment Program" means the program whereby TGC has advanced funds to MFC for advance payments to the holders of Depositor Claims of a portion of the obligation of MFC to the holders of such Depositor Claims.

A. 3 "Allowed Claim" means a claim as defined in Code § 101(4) less any distribution thereon by the Trustee in this case (a) with respect to which a proof of claim has been filed with the Court within the applicable period of time fixed either by the Court or the Rules of Bankruptcy Procedure, or (b) scheduled in the list of creditors prepared and filed with the Court by MFC, as amended and supplemented, and not listed as disputed, contingent or unliquidated as to amount, in either case as to which no objection to allowance thereof has been interposed within the applicable period of limitations fixed in the Plan or the Order of Confirmation, or as to which any such objection has been determined by an order or judgment which has become final.

A. 4 "Allowed Interest" means an Interest in MFC which is either (1) not disputed by the trustee or (2) allowed by the Court.

A. 5 "Allowed Secured Claim" means an Allowed Claim secured by a lien, security interest or other charge against property in which the estate of MFC has an interest.

A. 6 "Allowed Unsecured Claim" means an Allowed Claim which is not secured by a lien, security interest or other charge against property of MFC.

A. 7 "Bankruptcy Code" or "Code" means title 11 of the United States Code, as enacted and effective on February 10, 1983.

A. 8 "Closing Date" shall be a date, within 90 days of confirmation of the closing of the sale of assets of the Estate to TGC provided for in Article 4.3 hereof.

A. 9 "Confirmation" means the entry of an order of the Court confirming this Plan.

A. 10 "Court" means the United States District Court for the District of Hawaii, in which the Chapter 11 case of MFC is pending or such other Court of competent jurisdiction as is exercising jurisdiction over this bankruptcy case at the time of Confirmation.

A. 11 "Depositor Claims" means all unsecured claims against MFC arising from the issuance by MFC of "thrift accounts", as defined in Section 408A-3(e) of the Hawaii Revised Statutes, including interest accrued on such claims through the petition date (February 10, 1983), net of (a) amounts already paid and hereafter paid under the Advance Payment Program or otherwise by the Trustee, (b) interest accrued on amount due to the estate as preferences from January 10, 1984 at the rate of 10% per annum, and (c) amounts owing from depositors to MFC on account of principal and accrued interest on prepetition loans. Depositor Claims shall include the claims of former holders of MFC thrift accounts who have paid to the Trustee amounts received by them as preferences from MFC.

A. 12 "Effective Date" means the Closing Date, provided, however, that if the order of confirmation or consummation of this Plan is stayed upon motion pending appeal then the Effective Date shall be the date of the final order vacating such stay.

A. 13 "Estate" means the estate of MFC created in this reorganization case by Bankruptcy Code § 541.

A. 14 "Interest" means the currently issued and outstanding common and preferred stock of MFC.

A. 15 "MFC" means the Manoa Finance Company, Inc., a corporation organized under the laws of the State of Hawaii, and the debtor in this bankruptcy case.

A. 16 "MFC Cash" means any cash or cash equivalent which is any "Excluded Assets" as defined in the TGC Purchase Agreement, including but not limited to (i) all MFC cash held by the Trustee on May 31, 1985 amounting to approximately $3.3 million and (ii) all money generated by the operations of the Estate of MFC and interest income received by the Estate of MFC from May 31, 1985 to the Closing Date.

A. 17 "Order of Confirmation" means the order entered by the Court confirming this Plan in accordance with the pro-

visions of Chapter 11 of the Bankruptcy Code.

A. 18 "Plan" means this Chapter 11 plan of reorganization of MFC, as amended or modified.

A. 19 "State Fund" means a fund consisting of $8,000,000 appropriated by the State of Hawaii pursuant to Act 187 and loaned to TGC for purposes of this Plan.

A.20 "TGC" means Thrift Guaranty Corporation of Hawaii, a corporation established pursuant to Section 408A-4 of the Hawaii Revised Statutes.

A.21 "TGC Claim" means (a) all claims of TGC against MFC or holders of Depositor Claims under the Advance Payment Program, and (b) any and all claims of any nature, whether legal or equitable, liquidated or unliquidated, contingent, or otherwise, against MFC, MFC's Estate, the Trustee, and any present or former officers, directors, agents, servants, attorneys, of MFC.

A.22 "TGC Cash" means money deposited in the Suspense Account as defined in the TGC Purchase Agreement.

A.23 "TGC Fund" means a fund consisting of $19.5 million loaned to TGC by its members for purposes of this Plan.

A.24 "TGC Purchase Agreement" means the "Agreement of Purchase and Sale Pursuant to Plan of Reorganization" dated August 16, 1985, a copy of which is attached hereto as Exhibit A.

A.25 "TGC Sale Proceeds" means the State Fund and the TGC Fund.

A.26 "Trustee" means Charles R. Klenske, Chapter 11 Trustee of MFC.

B. Treatment of Unclassified Claims

The holders of Allowed Claims against the Estate of MFC, which Allowed Claims are entitled to priority under § 507(a)(1) of the Bankruptcy Code (administrative claims), including entities entitled to payment under § 503 of the Bankruptcy Code, shall receive on account of such claims cash in the amount of such claims as soon as practicable after the Effective Date. Notwithstanding the foregoing, professionals employed at the expense of the Estate and entities who may be entitled to an allowance of fees and expenses from this Estate pursuant to § 503(b)(2) through (6) of the Bankruptcy Code shall be paid in cash as soon as practicable after the entry of an order by the Court pursuant to § 330 or § 503(b)(2) through (6) of the Bankruptcy Code approving an allowance of compensation or reimbursement of expenses in favor of such entities.

C. Means of Execution

C.1 Vesting. From Confirmation, property of the Estate of MFC shall vest in the Estate, free and clear of all claims or liens, except as provided in this Plan or the Order of Confirmation.

C.2 Dissolution. Following the Effective Date, the Trustee shall take such steps under applicable state law as are necessary to dissolve MFC.

C.3 Securities of MFC. As of the Effective Date, the outstanding common and preferred stock of MFC shall be cancelled.

C.4 Distribution of Consideration.

a. Disbursing Agent. The Trustee shall serve as Disbursing Agent and shall distribute all property to be distributed under this Plan.

b. Disputed Claims.

(i) Withhold. The Disbursing Agent shall withhold from the property to be distributed under this Plan a sufficient amount to be distributed on account of the face amount of liquidated claims that are disputed and that have not become Allowed Claims as of the date of the initial distribution under the Plan. The Court shall determine what amount is sufficient to withhold as to any unliquidated claims.

(ii) Distribution. The property withheld, including the allocable portion of the net return yielded from investment of the cash withheld, shall be distributed on account of such disputed claims as such claims are allowed by a final order. Any property remaining after all disputes over claims have been determined and all administrative and other claims have been paid in full shall be returned to TGC.

C.5 Executory Contracts. To the best knowledge of the Trustee, there are no executory contracts or unexpired leases of the estate to be dealt with under this Plan. To the extent that there are any executory contracts outstanding, they shall be assumed and assigned to TGC. All cure payments which may be required by Bankruptcy Code § 365(b)(1) shall be made on the Closing Date or as soon thereafter as practicable.

C.6 Retention of Claims. All claims of the Estate for recovery of preferences against holders of deposit accounts issued by MFC are waived by the Estate as of the Effective Date except for prejudgment interest thereon. Any other claim

or cause of action belonging to MFC shall be retained by the Trustee upon Confirmation, and the Trustee shall have the authority to prosecute, defend, settle, transfer or compromise any such claim or cause of action in the name of the Estate.

C.7 Post-Confirmation Jurisdiction. After Confirmation, the Court shall retain jurisdiction for such purposes as are legally permissible and necessary to effectuate this Plan and the entry of any order in aid of consummation of this Plan, including, but not limited to, the following:

(i) The classication of any claim and the reexamination of claims which have been allowed as of the Effective date;

(ii) Hearing and determining any objection made by the Trustee to any claim (including claims arising from the rejection of any executory contract) or Interest;

(iii) Determination of all questions and disputes regarding title to the assets of the Estate of MFC;

(iv) The correction of any defect, the curing of any omission, or the reconciliation of any inconsistency in this Plan or the Order of Confirmation as may be necessary to carry out the purposes and intent of this Plan;

(v) The modification of this Plan after confirmation pursuant to the Bankruptcy Rules, Bankruptcy Code § 1127, and the rules of the Bankruptcy Court;

(vi) Enforcement and interpretation of the terms and conditions of this Plan and the TGC Purchase Agreement;

(vii) Entry of any Order, including injunctions, necessary to enforce the title, rights and powers of the Disbursing Agent and to impose such limitations, restrictions, terms and conditions of such title, rights and powers as this Court may deem necessary to protect the Disbursing Agent from actions taken by the holders of claims arising before the petition date;

(viii) To hear and determine any adversary proceedings brought under 11 U.S.C. §§ 542, 543, 547 or 548;

(ix) To make the allowance of fees to all professionals for service in this case in accordance with the Bankruptcy Code; and

(x) Entry of an Order concluding and terminating this case in a final decree in accordance with Bankruptcy Rule 3022.

ARTICLE II

CLASSIFICATION OF CLAIMS AND INTERESTS IN MFC

Claims against the Estate of MFC shall be classified as follows for purposes of this Plan:

Class 1: lass 1 consists of all Allowed Unsecured Claims of the kind described in Bankruptcy Code Section 507(a)(3), (6) and (7).

Class 2: Class 2 consists of all Allowed Depositor and Allowed Unsecured Claims.

Class 3: Class 3 consists of all Allowed Secured Claims.

Class 4: Class 4 consists of all Allowed Interests in MFC under MFC's common stock.

Class 5: Class 5 consists of all Allowed Interests in MFC under MFC's preferred stock.

Class 6: Class 6 consists of all claims of affiliates of MFC as they are defined in Code § 101(2).

Class 7: Class 7 consists of the TGC Claim.

ARTICLE III

TREATMENT OF CLAIMS AGAINST AND INTERESTS IN MFC

Class 1: As soon as practicable after the Effective Date, the Trustee shall pay to each holder of a claim included in Class 1 cash in the full amount of such claim.

Class 2: On the Closing Date, the Trustee shall pay to each holder of a claim included in Class 2 cash in the full amount of such claim. The State Fund shall be used only to pay the guaranteed portion of Allowed Depositor Claims. Payments to holders of Depositor Claims included in Class 2 shall be made by the Trustee from the State Fund, until the State Fund is exhausted, and thereafter from the MFC Cash and TGC Fund.

Class 3: Holders of claims included in Class 3 shall, upon the Effective Date, be restored to their legal and equitable rights under applicable state law.

Class 4: Holders of Interests in MFC's common stock shall receive nothing under the Plan.

Class 5: Holders of Interests in MFC's preferred stock shall receive nothing by way of this Plan.

Class 6: Claims of Affiliates shall take nothing by way of this Plan.

Class 7: TGC shall waive the TGC Claim in connection with the purchase of certain assets from the Estate provided for in Article 4.3 hereof.

ARTICLE IV

MEANS FOR EXECUTION OF THE PLAN

4.1 Sources of Funding. Payments required to be made by the Trustee under the Plan shall be funded from the MFC Cash (amounting to approximately $3,300,000) and the TGC Sale Proceeds made up of the TGC Fund (amounting to approximately $19,500,000) and the State Fund (amounting to $8,000,000) (plus additions which the Trustee estimates will be at least $1,050,000).

4.2 Uses of Funding. The Trustee shall pay out of the MFC Cash all expenses allowed pursuant to Paragraph 507(a)(1) of the Bankruptcy Code and Allowed Claims included in Class 1. The balance of the MFC Cash shall be applied by the Trustee, together with the TGC Sale Proceeds, to the payment of Class 2 Claims. The Trustee will deduct from the amounts owing to MFC's depositors as of the date of the Chapter 11 petition the following offsets of the Estate against such claims: (a) the amount of payments previously made by TGC to depositors under the Advance Payment Program or otherwise by the Trustee; (b) interest which accrued on all preferences paid by MFC to depositors, computed at the rate of 10% per annum from January 10, 1984, and (c) amounts owed to MFC by depositors on account of principal and accrued interest on prepetition loans by MFC to depositors. On the Closing Date, the Disbursing Agent shall pay the allowed Depositor Claims and allowed Unsecured Claims in full. The Disbursing Agent shall withhold from distribution a sufficient amount to pay disputed claims, and for estimated future administrative cost until such time as the Court resolves all disputed claims. Except as otherwise provided by law, any undisbursed, undistributed or unclaimed funds remaining in the Estate after the payment of all (administrative and other) claims shall become the property of TGC, in consideration of

the payment made by TGC and the waiver by TGC of the TGC Claim, at such time as the Court enters an order closing the MFC Chapter 11 case.

4.3 TGC Asset Purchase. On the date provided therein as the Closing Date, the Trustee and TGC shall conduct a closing with respect to the TGC Purchase Agreement. At the Closing, the Trustee shall convey to TGC all of the Purchased Assets, as defined in the TGC Purchase Agreement. In consideration for these transfers, TGC shall pay to the Estate the sum of $27.5 million in cash on the Closing Date, subject to adjustments to the purchase price as set forth in the TGC Purchase Agreement. All costs and expenses associated with the closing of the sale of assets to TGC, as provided in the TGC Purchase Agreement, shall be paid by TGC. Such costs of closing the TGC Purchase Agreement incurred by MFC shall be reimbursed by TGC upon presentation of written invoices, without the necessity of applications for allowance of professional compensation or further order of the Court. The sale of assets to TGC shall be made as is, where is, without any warranty by the Trustee or Estate as to title to the assets sold or any other matter. The sale of assets to TGC shall be made subject to the liens and encumberances permitted in the TGC Purchase Agreement.

4.4 Release. The Confirmation of this Plan, and the payment to the Trustee of the TGC Fund, the State Fund and other amounts due the Trustee under and upon Closing of the TGC Purchase Agreement, shall operate as and constitute a complete release, discharge, and waiver of any and all claims, of whatever nature, whether legal or equitable, contingent, liquidated or unliquidated, which exist, may exist, have been asserted, or might be asserted, by the holders of Depositor Claims against TGC, and any of its officers, directors, agents, employees or servants; its member institutions or their officers, directors, agents, employees and servants; and the State of Hawaii, and all of its officers, agents, employees, and servants. The effect this release shall be to bar any action which has been commenced, or might hereafter be commenced, against TGC or the State of Hawaii by the holders of Class 2 claims arising from or related to the business or activities of MFC, or the issuance of thrift accounts by MFC.

4.5 Equitable Subordination Action. Confirmation of this Plan and the payment to the Trustee of the TGC Fund,

the State Fund and other amounts due the Trustee under and upon Closing of the TGC Purchase Agreement shall operate as a dismissal with prejudice of the action filed by the Official Creditors' Committee on MFC against TGC.

ARTICLE V

DISCLOSURE INFORMATION

The Trustee submits the following information to MFC's creditors to inform them as to the provisions of the Plan. The Bankruptcy Court, by order dated August 27, 1985, authorized the Trustee to submit the Plan to all parties in interest. The information set forth in this Article, and the accompanying financial statements, is based upon the Trustee's investigation of the affairs of MFC, and is the most accurate information available. The accompanying balance sheets as of December 31, 1983 and December 31, 1984 have been audited by a certified public accountant firm, but, because of limitations on scope of its examination and certain uncertainties, it could and did not express an opinion as to their accuracy. The Trustee is therefore unable to certify that the information provided is without any inaccuracy.

5.1 MFC's Organization and Business. MFC was incorporated as an Industrial Loan Company in 1960. By 1970, MFC's financial statements showed total assets of $26,500,000, and MFC had issued investment certificates to depositors totalling over $16,000,000. From its inception, MFC was controlled and managed by Hirotoshi Yamamoto.

The primary business of MFC was the issuance of investment certificates to the public and the making of secured and unsecured loans to individuals and businesses. MFC financed real estate purchases through agreements of sale, and acquired real estate for development.

In 1972, MFC purchased National Braemar, Inc., a California corporation which owned the Japanese Cultural Center in San Francisco. In the same year, National Braemar acquired another California corporation, Dream Entertainments, Inc., which owns and operates an entertainment complex in the Japanese Cultural Center.

The operations of MFC and its affiliates generated losses of approximately $1 million in 1980 and $3.3 million in 1981. Although MFC reported a profit in 1982 of approximately $350,000, losses in 1983 totalled nearly $8.5 million. In February 1983, Hawaii State banking authorities obtained a court

order appointing TGC to act as receiver of MFC as a result of the failure of MFC to comply with the net capital and other requirements of Hawaii law concerning Industrial Loan Companies. MFC filed a voluntary petition under Chapter 11 of the Bankruptcy Code on the day following the receivership order. MFC operated as a debtor in possession under the Bankruptcy Code, with Charles Klenske as Chief Operating Officer, until June 1983. At that time, the Court appointed Mr. Klenske to act as Chapter 11 Trustee of MFC.

5.2 Current Financial Condition. At the beginning of the Chapter 11 case the approximate claims against MFC were as follows:

(i) secured claims	=	$20.5 million
(ii) Depositor claims	=	45.0 million
(iii) other claims	=	1.1 million
Total		$66.6 million

Total assets were valued at $49.8 million, leaving a shortfall of approximately $16.8 million.

Since his appointment, the Trustee has devoted substantial effort to sale of MFC's real property and other assets in order to generate cash for the payment of depositor and other claims against MFC. Through May 31, 1985, total asset sales amounted to $7,424,113, with gains of $3,009,888 realized on the sales. Secured claims against MFC's assets which are entitled to priority payment have been reduced by almost $20 million since the beginning of the case.

As of June 30, 1985, the balance sheet shows that all claims against MFC amount to approximately $44 million. Balance sheet assets are valued at $33.7 million, leaving a present shortfall of approximately $10.3 million.

Attached as Exhibit B are copies of the audited balance sheets for MFC and its subsidiaries which show the company's assets and liabilities as of December 31, 1983, December 31, 1984, and, on an unaudited basis, June 30, 1985. Although the book value of MFC's assets was approximately $33.7 million as of June 30, 1985, many of MFC's loan and other assets are, in the Trustee's opinion, uncollectable.

For example, the June 30, 1985 balance sheet shows net property and equipment of $22.2 million. However, of this amount $4.3 million represents undeveloped, nonearning property located principally in Waianae and Makaha, Oahu, Molokai, and Lancaster, California. The saleability of these proper-

ties depends largely on future growth, improvement in the real estate market generally and, in some cases, zoning changes. Market demand for many of these properties is presently nil. Property owned by MFC in the Royal Gardens subdivision on the Island of Hawaii has been overrun by lava flows and has a market value of approximately 20 percent of its book value.

5.3 Claims Analysis. The Trustee presently estimates that total depositor claims amount to $29,900,000, and that total unsecured claims not subject to immediate set off amount of $854,000. However, the Trustee intends to dispute approximately $464,000 of those unsecured claims. Current administrative claims amount to approximately $644,000. Secured claims against MFC and its subsidiaries amount to approximately $596,000, but these amounts will not be paid under the Plan. Future expenses of operating MFC's estate through consummation of the Plan may amount to as much as $350,000. The $12.6 million paid to guaranteed depositors under the Advance Payment Program shall be forgiven by TGC in its entirety. TGC shall assert no claim against either the Estate or the guaranteed depositors for those advances.

The total amount of claims against the Estate cannot be ascertained precisely because, among other things: (i) there may be additional claims filed by creditors before the date established by the Court as the last day for filing claims (September 3, 1985); (ii) certain claims against the Estate are the subject of litigation and have not yet been liquidated; and (iii) the amount of future expenses which will be incurred by the Estate for legal, accounting and other services cannot be predicted precisely. However, based on the income projected in Section 4.1 of the Plan the Trustee believes there will be sufficient funds available to pay all Class 1 and Class 2 claims in full.

5.4 Liquidation Analysis. The Trustee believes that the fair market value of the real property shown on the attached balance sheets are not realizable in the short term. The value of MFC's receivables will only be realized as loans due to MFC are paid over their normal time frame. Accordingly, the fair market values of MFC's assets should be substantially discounted to take into account (a) the lengthy holding period necessary to realize the value of the properties and receivables or (b) the decreased values of the assets which would be realized through an immediate sale.

On the basis of the foregoing factors, it is the Trustee's

opinion that the present market value of MFC's assets (aside from cash) is approximately $27.5 million.

The Trustee believes that the Plan presents the best opportunity available for MFC's creditors to obtain prompt payment of their claims. The Trustee's efforts to find a financial institution to merge with MFC and continue its pending business have been unsuccessful. Repayment of up to $10,000.00 of each of the Depositor Claims against MFC is provided for under Hawaii law through TGC. However, TGC has insufficient assets to pay in full all guaranteed Depositor Claims. The only alternative to a bulk sale of MFC's assets (as provided for in this Plan) is the piecemeal sale of MFC's properties, and collection of its receivables. Such a liquidation program would be extremely expensive, since it would entail continuatibn of MFC's Chapter 11 case and associated administrative costs. Additionally, a piecemeal liquidation program would, after application of appropriate discounting principles, not produce a greater return to MFC's creditors than the proposed Plan. Even if the Trustee were able to realize the fair market values of MFC's assets, there would be insufficient funds available to return any amount of MFC's shareholders. This is because unsecured creditors would be entitled to receive post-petition interest on their claims to the extent assets were available in the Estate to pay such amounts before MFC's shareholders would receive anything in a liquidation.

5.5 Development of this Plan. The Plan is the product of negotiation among the Trustee, TGC and the State of Hawaii and is contingent upon the closing of the TGC Purchase Agreement. That Agreement is incorporated into this Plan as Exhibit A. In the event of a conflict between the Plan and the TGC Purchase Agreement, the terms of the Plan shall govern.

5.6 Agreements with TGC, the Trustee and Related Parties. Following confirmation, the Trustee will be employed by TGC to act as a consultant in connection with the liquidation of the assets sold for an annual fee of $12,000.00. The Trustee's principal assistants, Mr. Ray Almeida and Mr. Cedric Yamamoto, who are presently employed by the Estate, will become employees of TGC at compensation commensurate to that which they now receive. Further, TGC will provide to the Estate, at no cost, office space, computer services and personnel necessary to assist the Trustee in making the distributions to creditors contemplated by this Plan and taking the other

actions necessary to wind up MFC's affairs and the close of the Chapter 11 case.

The law firm of Carlsmith, Wichman, Case, Mukai and Ichiki ("Carlsmith") has represented the Trustee as special counsel in the MFC Chapter 11 case, and as a result is familiar with many of the legal problems associated with MFC's properties. TGC had advised the Trustee that it intends to take advantage of Carlsmith's experience by retaining it to assit TGC in legal matters pertaining to the properties acquired by TGC from the Trustee.

5.7 Effect of Confirmation of the Plan. In the event that the Court confirms this Plan and the other contingencies are met, the Trustee will sell the Purchased Assets (as defined in the TGC Purchase Agreement) to TGC for approximately $27.5 million plus interest; the Trustee will retain the cash in MFC's Estate amounting to approximately $3.3 million, plus additions; and TGC will complete the Advanced Payment Program.

On the Closing Date, the Trustee shall make payments to holders of Allowed Unsecured Claims, which include Depositor Claims. Depositor Claims are defined in Section A.11 of this Plan, and generally consist of the amounts owed to Depositors under their MFC thrift accounts as of the date of the Chapter 11 petition, less (a) amounts already paid to them by MFC, (b) interest on preference payments which is owed to the Estate, and (c) the amount of principal and accrued interest on any loans outstanding from MFC to depositors. SUBJECT TO THESE OFFSETS, THE TRUSTEE WILL PAY ALLOWED DEPOSITOR AND ALL OTHER ALLOWED UNSECURED CLAIMS IN FULL.

The Creditors' Committee of MFC has filed an action to equitably subordinate the claims of TGC. Confirmation of the Plan and payment in full of amounts due to the Trustee under and upon closing of the TGC Purchase Agreement will operate as a dismissal of that action, as well as a complete release and waiver of any claims of MFC and holders of MFC investment certificates against TGC, the State of Hawaii and each of the member institutions of TGC in consideration of the appropriation of the funds necessary to pay depositors in full and fund this Plan. Therefore, the Plan will provide that each creditor and equity security holder, for themselves and for their successors and assigns, will be deemed to have released and forever discharged those entities and individuals from all claims as set

forth in the Plan. The sale of assets and waiver of claims are material terms of the Plan. The Trustee believes that the provisions incorporated into the Plan relating thereto and the provisions regarding the waiver and release of claims are reasonable and appropriate. Moreover, the Trustee believes that even if the Trustee and the creditors brought suit regarding any of the alleged causes of action released under the Plan, if any, judicial resolution of the complex issues involved in these lawsuits would take years and would prevent any significant distributions to creditors.

The Trustee has been advised that if the Plan is confirmed, and the Trustee receives all amounts due under and upon closing of the TGC Purchase Agreement, all holders of Depositors Claims will be bound by the terms of the waivers and releases and may be barred from challenging such releases in any future proceedings.

Even if the Plan is confirmed by the Court, the funding of the Plan is contingent upon closing the TGC Purchase Agreement. In the absence of the transactions with TGC, the Trustee will not have sufficient funds to make the payments to depositors and other creditors contemplated by this Plan. The closing of the TGC Purchase Agreement is dependent on, among other matters:

(a) The willingness of TGC's members thrift institutions to loan TGC the $19.5 million and the State of Hawaii to loan TGC $8.0 million necessary to fund the asset purchase.

(b) The satisfaction of officials of the State of Hawaii that the State and TGC are protected against claims of depositors of MFC and Great Hawaiian Financial Corporation.

(c) The dismissal by Hawaii State courts of certain pending class action litigation brought by depositors of MFC and Great Hawaiian Financial Corporation against the State.

5.8 Confirmation. The Bankruptcy Code contains complex provisions regarding confirmation of reorganization plans. Because the Plan provides for payment in full to all of MFC's unsecured creditors and does not affect secured creditors, their acceptance of the Plan is not required under the Code. Further, Class 4, 5, 6 and 7 claims under the Plan receive nothing, and these classes are deemed to reject the Plan.

Accordingly, the Trustee is not seeking the acceptance of the Plan by any Class, and the Trustee is not distributing ballots for acceptance or rejection of the Plan.

The Court will conduct a hearing with respect to confirmation of the Plan on September 30, 1985 at 1:30 p.m., before the Honorable Samuel King, United States Distric Court Judge, in his Courtroom located at United States Courthouse, Honolulu, Hawaii. Any objections to the Plan must be set forth in writing, served on counsel for the Trustee, and filed with the Court not less than 10 days before the hearing.

HOLDERS OF MFC THRIFT ACCOUNTS AND OTHER UNSECURED CREDITORS NEED DO NOTHING FURTHER TO PARTICIPATE IN DISTRIBUTIONS UNDER THE PLAN IF THEIR CLAIMS ARE NOT DISPUTED.

ARTICLE VI

The Trustee, as proponent of this Plan, hereby requests confirmation of this Plan pursuant to Bankruptcy Code § 1129(b).

DATED: Honolulu, Hawaii, August 27, 1985.

/s/ Charles R. Klenske
CHARLES R. KLENSKE
Trustee

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Attorneys for Trustee

UNITED STATES BANKRUPTCY COURT
DISTRICT OF HAWAII

Exhibit J-1

In re	)	CASE NO. 83-0065
	)	(Chapter 11)
MANOA FINANCE	)	
COMPANY, INC.,	)	ORDER CONFIRMING
a Hawaii corporation,	)	PLAN, AUTHORIZING
	)	SALE OF ASSETS,
Debtor.	)	APPOINTING
	)	DISBURSING AGENT
	)	AND FIXING
	)	DEADLINES FOR
	)	FILING THE
	)	ADMINISTRATIVE
	)	CLAIMS
	)	
Oct. 2, 1985	)	DATE: September 30, 1985
	)	TIME: 1:30 p.m.

The "Plan of Reorganization (Including Disclosure Statement) Proposed by Charles R. Klenske, Chapter 11 Trustee" (the "Plan") of Manoa Finance Company, Inc., a Hawaii corporation, Debtor ("MFC"), having been transmitted to creditors and equity security holders, the Court having conducted a hearing with respect to confirmation of the Plan, the Court having entered its findings of fact and conclusions of law with respect to the Plan dated September , 1985, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. The "Plan of Reorganization (Including Disclosure Statement) Proposed by Charles R. Klenske, Chapter 11 Trustee" dated August 27, 1985 ("Plan"), a copy of which is attached hereto, is hereby confirmed.

2. The provisions of the Plan are binding upon MFC, Thrift Guaranty Corporation of Hawaii ("TGC"), the State of Hawaii, all creditors of MFC, and all equity security holders of MFC, regardless of whether the claims or interests of such creditors or equity security holders are impaired under the Plan and whether such creditors, equity security holders have accepted the Plan.

3. Except as provided in the Plan, all property of the estate of MFC is hereby vested in MFC.

4. Except as provided in the Plan, all property of the estate of MFC is hereby vested in MFC free and clear of all claims and interests of creditors and equity security holders of MFC.

5. Except as provided in the Plan, MFC is discharged from any debt that arose prior to the date hereof and any debt of a kind specified in 11 U.S.C. § 502(g), (h), or (l) regardless of whether such claim is allowed, whether the holder of such claim accepted the Plan, or whether the right to payment was reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, secured, or unsecured.

6. Pursuant to Article III of the Plan, as of the Effective Date, any claims of any affiliate of MFC against MFC are released and extinguished.

7. Any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of MFC with respect to any debt discharged, is void.

8. The commencement or continuation of any action, the employment of process, or any act, to collect, recover or offset any such debt as a personal liability of MFC, or from property of MFC, is enjoined.

9. Pursuant to Article I(c)(6) of the Plan, to the extent there are any executory contracts or unexpired leases of MFC presently in effect, such executory contracts and unexpired leases shall be assumed and assigned to TGC.

10. All final requests for payment of administrative expenses pursuant to 11 U.S.C. § 507(a)(1), including without limitation, all applications for compensation of professional persons for services rendered prior to the Effective Date of the Plan, must be filed on or before 60 days after the Effective Date of the Plan. Until that time, the Interim Compensation Procedures for Professionals employed by Court order shall remain in effect. Supplemental compensation of professional persons employed by order of the Court for services rendered after the Effective Date of the Plan shall continue in accordance with the Interim Compensation Procedure, except that no further notice shall be given to creditors.

11. Pursuant to Article I(c)(4) of the Plan, Charles R. Klenske is hereby appointed to serve as Disbursing Agent under the Plan.

12. All distributions under the Plan shall be made by the Disbursing Agent as soon as practicable on or after the Effective Date.

13. The Trustee is authorized to carry out the transactions provided for in the "First Amended Agreement of Purchase and Sale Pursuant to Plan of Reorganization" ("Agreement"), a copy of which is attached as Exhibit A to the Plan.

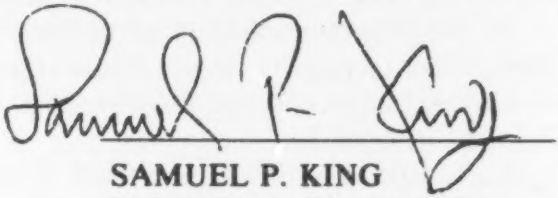
14. This Court shall retain jurisdiction for the purposes set forth in Article I(c)(8) of the Plan.

15. The Effective Date of the Plan shall be in accordance with the Plan.

16. Copies of this Order shall be mailed by the Trustee to all creditors, equity security yolders, and other parties in interest, along with notice of entry hereof.

17. The Objection to Confirmation by Hirotoshi Yamamoto is hereby overruled.

DATED: Honolulu, Hawaii, October 2, 1985



SAMUEL P. KING
United States District Judge

In re Manoa Finance Company, Inc.
Bankruptcy Court No. 83-00065
Order Confirming Plan, Authorizing Sale
of Assets, Appointing Disbursing Agent and Fixing
Deadlines for Filing the Administrative Claims

CERTIFICATE OF SERVICE

The undersigned hereby certifies that three (3) copies each of the foregoing PETITION FOR CERTIORARI have been transmitted by personal delivery to:

Ms. Corinne A. Watanabe, Esquire
Attorney General
State of Hawaii
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Mr. Larry S. Matsuda,
President
Thrift Guaranty Corporation of Hawaii

Mr. Ivan M. Lui-Kwan, Esquire
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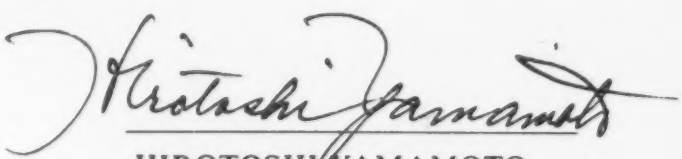
Attorney for Plaintiff-Appellee

Dated: Honolulu, Hawaii, September 22, 1986



HIROTOSHI YAMAMOTO

FILED
JAN 2 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-558

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

HIROTOSHI YAMAMOTO,

Petitioner,

v.

CHARLES R. KLENSKE,
Trustee in Reorganization, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF RESPONDENT STATE OF HAWAII IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the *pro se* Petitioner has standing to litigate the issues presented by the Petition for Certiorari?

2. Whether the claim that the Act of June 3, 1985, ch. 187, 1985 Hawaii Sess. L. 316, violates the Constitution, raised by a petition for rehearing in the Court of Appeals in February, 1986, in appeal No. 84-2807 (9th Cir. decided Feb. 4, 1986) ("*Manoa Finance II*"), was properly rejected below on procedural grounds, particularly given that:

   (a) the litigation below, *i.e.*, *Manoa Finance II*, involved an adversary proceeding brought to determine Petitioner's obligations as a *debtor* of Manoa Finance Company, Inc.;

   (b) when the petition for rehearing in *Manoa Finance II* was filed, the Court of Appeals, in *Manoa Finance I*, No. 85-2692 (9th Cir. Dec. 30, 1985), had just affirmed an October 2, 1985, decision rejecting Petitioner's claims as a putative *owner* of Manoa Finance Company, Inc.; and

   (c) Petitioner's instant federal claims, which seek to relitigate his claims as an asserted owner rejected by *Manoa Finance I*, both could have and should have been presented to the lower courts in that earlier litigation?

3. Whether, assuming this Court may review the merits of Petitioner's claims, any substantial federal question is presented by the District Court's liquidation of Manoa Finance Company, Inc., pursuant to a plan in which public funds made available by Hawaii

law subsidized the interests of particular classes of creditors to which Petitioner did not belong?*

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* Petitioner, Hirotoshi Yamamoto, is an individual named as a defendant in the adversary proceeding filed in the United States Bankruptcy Court for the District of Hawaii, *sub nom. Klenske v. Yamamoto*, No. 83-0222 (D. Hawaii filed Dec. 16, 1983), from which the instant petition arises. Also named in the District Court were George W.H. Goo, Robert S. Teramoto, Masayuki Tokioka, Shizuko Yamamoto, Sakae Takahashi, Elizabeth Takahashi, Makaha Laundry, Inc., Makaha Reef, Inc., Takahashi-Yamamoto Joint Ventures, SSK Investments, Inc., and Asian American Medical Clinic of San Francisco. The partial summary judgment entered in the District Court on November 14, 1984, involved only Counts VIII and XVII of the Complaint in No. 83-0222, in which Yamamoto was the sole defendant. Pursuant to the Clerk's order dated December 2, 1986, the State of Hawaii, which did not appear below, is a respondent pursuant to 28 U.S.C. § 2403(b) (1982). Charles R. Klenske, Trustee in the Chapter 11 case in the District Court from which arose the adversary action at issue on this petition, is also a respondent here.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
A. The Regulatory Background.	6
B. Events Leading to Liquidation of Manoa Finance Company, Inc.	8
1. The Chapter 11 Proceedings Leading to *Manoa Finance I.*	8
2. Manoa Finance Company's Massive Liabilities.	9
3. The State of Hawaii's Infusion of Funds to Subsidize Depositor Interests.	10
4. The Plan of Reorganization and the Liquidation Order Affirmed in *Manoa Finance I.*	12
C. The Adversary Proceedings Below Leading to *Manoa Finance II.*	15
REASONS FOR DENYING THE WRIT	16
I. Petitioner Lacks Standing to Interject the Claimed Federal Defenses to His Liability to the Estate.	17
II. Petitioner's Substantive Claims are Otherwise Barred by the Reorganization Plan Litigation.	19

III. Even if the Liquidation Order Could Be Reviewed, Petitioner's Points of Error are Insubstantial. 22

CONCLUSION 25

TABLE OF AUTHORITIES

CASES:	Page
Anderson v. Bessemer City, 470 U.S. 564 (1984)	24
Bender v. Williamsport Area School District, 106 S. Ct. 1326 (1986)	14 n.8, 17-18
Connolly v. Pension Benefit Guaranty Corp., 106 S. Ct. 1018 (1986)	22-23
Dandridge v. Williams, 397 U.S. 471 (1970)	24
Delta Airlines, Inc. v. August, 450 U.S. 346 (1981)	18
Durfee v. Duke, 375 U.S. 106 (1963)	19
Federated Department Stores, Inc. v. Moitie, 452 U.S. 394 (1981)	20
Fidelity Federal Savings & Loan Association v. De La Cuesta, 458 U.S. 141 (1982)	23
Foman v. Davis, 371 U.S. 178 (1962)	21
Hoover v. Ronwin, 466 U.S. 558 (1984)	18
In re Manoa Finance Co., Inc., Bankr. No. 83-65 (D. Hawaii Bankr. Oct. 2, 1985), *aff'd*, No. 85-2692 (9th Cir. Dec. 30, 1985) ("*Manoa Finance I*")	*passim*
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In re Chicago, Milwaukee, St. Paul and Pacific Railroad Co., 799 F.2d 317 (7th Cir. 1986)	20
Kelly v. Robinson, 107 S. Ct. 353 (1986)	23 n.12
Kremer v. Chemical Construction Co., 456 U.S. 461 (1982)	19
Limbach v. Hooven & Allison Co., 466 U.S. 353 (1984)	20-21
McDonald, Sommer & Frates v. Yolo County, 106 S. Ct. 2561 (1986)	20,25
McGoldrick v. Compagnie Generale Transatlantique, 309 U.S. 430 (1940)	18

Table of Authorities continued

	Page
Nevada v. United States, 463 U.S. 110 (1983)	20
Newport v. Fact Concerts, Inc., 453 U.S. 247 (1981)	18
Ohio Civil Rights Comm'n v. Dayton Christian Schools, 106 S. Ct. 2718 (1986)	19
Parklane Hosiery Co. v. Shore, 439 U.S. 322 (1979)	20
Penn Central Transportation Co. v. New York City, 438 U.S. 104 (1978)	23
Reed v. Allen, 286 U.S. 191 (1932)	21
State Farm Insurance Co. v. Duel, 324 U.S. 154 (1945)	21
Underwriters National Assurance Co. v. North Carolina Life & Accident & Health Insurance Guaranty Association, 455 U.S. 691 (1982) .	19
United States v. Security Industrial Bank, 459 U.S. 70 (1982)	25
Williamson v. Lee Optical Co., 348 U.S. 483 (1955)	24
CONSTITUTIONAL PROVISIONS:	
United States Constitution, Article I, § 8, cl. 4 ...	3
United States Constitution, Article III, § 2, cl. 2	3
United States Constitution, Article VI	3
United States Constitution, Fifth Amendment	4
United States Constitution, Fourteenth Amendment	4
STATUTES:	
11 U.S.C. § 507(a) (1982 & Supp. III 1985)	12
11 U.S.C. ch. 11 (1982 & Supp. III 1985)	8,21

Table of Authorities continued

Page

11 U.S.C. § 1123(a)(5)(D) (1982 & Supp. III 1985) 13,25 n.13

11 U.S.C. § 1129(a)(11) (1982) 13,25 n.13

11 U.S.C. § 1129(b)(2) (1982 & Supp. III 1985) 13 n.7,25 n.13

28 U.S.C. § 1254(1) (1982) 2

28 U.S.C. § 1291 (1982) 3,16

28 U.S.C. § 1334 (1982) 3,15

28 U.S.C. § 2101(c) (1982) 3,19

28 U.S.C. § 2403(b) (1982) ..... ii n.*

Act of April 27, 1931, ch. 148, 1931 Hawaii Sess. L. 144-46, *as amended and codified*, Hawaii Rev. Stat. ch. 401 (1985) 4,6 n.2,7 n.3

Act of May 17, 1937, ch. 230, 1937 Hawaii Sess. L. 90, *as amended and codified*, Hawaii Rev. Stat. § 401-12 (1985) 7

The Hawaii Industrial Loan and Investment Act of 1937 and amendments

Act of May 17, 1937, ch. 231, 1937 Hawaii Sess. L. 202-18, *as amended and codified*, Hawaii Rev. Stat. ch. 408 (1985) 4

Hawaii Rev. Stat. § 408-14(a)(6) (1985) 6 n.1

Act of May 23, 1972, ch. 113, § 1, 1972 Hawaii Sess. L. 421-22, *as amended and codified*, Hawaii Rev. Stat. § 408-14(c) (1985) 7 n.3

Act of May 5, 1977, ch. 28, § 1, 1977 Hawaii Sess. L. 36, *as amended and codified*, Hawaii Rev. Stat. § 408-13 (1985) 7 n.3

Act of May 16, 1979, ch. 71, § 2, 1979 Hawaii Sess. L. 145-46, *as amended and codified*, Hawaii Rev. Stat. § 408-14(d) (1985) 7 n.3

The Hawaii Industrial Loan Company Guaranty Act of 1977 and amendments

Table of Authorities continued

	Page
Act of April 1, 1977, ch. 2, 1977 Hawaii Sess. L. 3-15, *as amended and codified*, Hawaii Rev. Stat. ch. 408A (1985)	4,7,22
Hawaii Rev. Stat. § 408A-4 (1985)	7
Hawaii Rev. Stat. § 408A-10 (1985)	7
Hawaii Rev. Stat. § 408A-14(a) (1985)	8
Hawaii Rev. Stat. § 408A-14(c) (1985)	8,23
Act of June 8, 1983, ch. 233, § 2, 1983 Hawaii Sess. L. 483, *codified*, Hawaii Rev. Stat. § 408A-4 (1985)	12 n.4
Act of June 3, 1985, ch. 187, 1985 Hawaii Sess. L. 316-20 ("Act 187"), *codified in part*, Hawaii Rev. Stat. ch. 408A (1985)	i,4,11-13,15-16,19,21,24
Act 187, § 5	11
Act 187, § 5(1)(A)	11
Act 187, § 5(2)	11
Act 187, § 5(3)	11
Act 187, § 5(4)	11
Act 187, § 6	12 n.4
Act 187, § 7	11
Hawaii Rev. Stat. § 415-50 (1985)	17
COURT RULES:	
U.S. Sup. Ct. R. 17	17
Fed. R. Civ. P. 54(b)	15
Bankruptcy Rule 7013 (1983)	22 n.11
Bankruptcy Rule 7024 (1983)	18
Bankruptcy Rule 7054(a) (1983)	15
LEGISLATIVE HISTORY:	
Act of May 29, 1925, ch. 268, § 3, 1925 Hawaii Sess. L. 383	6 n.2
Hawaii Sen. Stand. Comm. Rep. No. 225-85, *reprinted in* 1985 Hawaii Sen. J. 991	10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

No. 86-558

HIROTOSHI YAMAMOTO,

Petitioner,

v.

CHARLES R. KLENSKE,
Trustee in Reorganization, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

---

BRIEF OF RESPONDENT STATE OF HAWAII IN OPPOSITION

Respondent State of Hawaii respectfully prays that this Court deny the Petition for Certiorari to review the opinion and judgment of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on February 4, 1986.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 781 F.2d 1370 (9th Cir. 1986) [hereinafter "*Manoa Finance II*"], and is reprinted at Petitioner's Appen-

dix [hereinafter "Pet. App."] B. The unpublished order of the Court of Appeals denying Petitioner's petition for rehearing and rejecting Petitioner's suggestion for rehearing *en banc* is reprinted at Pet. App. C. The District Court's November 14, 1984 order, from which appeal was taken to the Court of Appeals, appears at Pet. App. A.

Other opinions and orders related to the petition include the District Court's Findings of Fact and Conclusions of Law entered upon confirmation of the Trustee's Chapter 11 plan of reorganization in *In re Manoa Finance Company, Inc.*, Bankr. No. 83-65 (D. Hawaii Bankr. filed Oct. 2, 1985), which are reprinted at Appendix ["App."] A, *infra;* the District Court's Order confirming the plan, *id.* (filed Oct. 2, 1985), which is reprinted at Pet. App. J; and the order of the Court of Appeals dismissing the appeal from the District Court's October 2, 1985, order, No. 85-2692 (9th Cir. Dec. 30, 1985) (*"Manoa Finance I"*), which is reprinted at App. E, *infra.*

JURISDICTION

The judgment of the Court of Appeals in *Manoa Finance II* was entered on February 4, 1986. A petition for rehearing and suggestion of the appropriateness of rehearing *en banc* were denied on June 24, 1986, and the Petition for Certiorari was filed on September 22, 1986. Although jurisdiction in this Court appears to have been invoked under 28 U.S.C. § 1254(1) (1982), the State of Hawaii respectfully suggests that Petitioner may lack standing as a result of the judgment of the Court of Appeals in *Manoa Finance I*, entered on December 30, 1985, of which this Court has no jurisdiction to give direct appellate

review. Jurisdiction, however, properly lay under 28 U.S.C. § 1334 (1982) for the District Court to enter its order of November 14, 1984, granting the Trustee's adversary claim. The Court of Appeals determined it had authority to hear an appeal from that order under 28 U.S.C. § 1291 (1982).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Because of the posture of the federal questions presented here for review, the most pertinent constitutional provision is Article III, section 2, clause 2 of the Constitution of the United States, which provides in relevant part that

> In all . . . Cases [but those affecting ambassadors, other public ministers, and those in which a state shall be a party,] the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The most relevant statutory provision is section 2101(c) of Title 28, United States Code, which provides in part that

> [A]ny writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be . . . applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

Federal constitutional and statutory provisions less directly involved include the Bankruptcy, Supremacy,

and Just Compensation Clauses, as well as the Due Process Clause of the Fourteenth Amendment of the United States Constitution, and relevant provisions of Title 11, United States Code, which are reprinted at App. I, *infra*. The statutory authority of the Bank Examiner of Hawaii (now known as the Commissioner of Financial Institutions), established by the Act of April 27, 1931, ch. 148, § 2, 1931 Hawaii Sess. L. 144, *as amended and codified,* Hawaii Rev. Stat. ch. 401 (1985), and the Hawaii Industrial Loan and Investment Act, Act of May 17, 1937, ch. 231, 1937 Hawaii Sess. L. 202-18, *as amended and codified,* Hawaii Rev. Stat. ch. 408 (1985), which extends the Bank Examiner's power to industrial loan companies, are reprinted in relevant part at App. J, *infra*. The Hawaii Industrial Loan Company Guaranty Act, Act of April 1, 1977, ch. 2, 1977 Hawaii Sess. L. 3, *codified,* Hawaii Rev. Stat. ch. 408A (Supp. 1977), and the 1983 amendments thereto, Act of July 1, 1983, ch. 233, 1983 Hawaii Sess. L. 481, *codified,* Hawaii Rev. Stat. ch. 408A (Supp. 1983), *recodified at* Hawaii Rev. Stat. ch. 408A (1985), are reprinted in relevant part at App. K, *infra*. The Act of June 3, 1985, ch. 187, 1985 Hawaii Sess. L. 316, *codified in part,* Hawaii Rev. Stat. ch. 408A (1985), which amends the Industrial Loan Company Guaranty Act, is reprinted at Pet. App. H.

STATEMENT OF THE CASE

The instant Petition represents a final chapter in Hirotoshi Yamamoto's legacy of mismanagement at Manoa Finance Company, Inc. ("MFC"), which operated as an industrial loan company in Hawaii from 1960 until its liquidation under a reorganization plan

confirmed by the District Court on October 2, 1985. MFC's self-inflicted demise was precipitated by its violations of state-law capitalization rules enacted in 1972 to protect the investing public from unsound industrial loan practices. In 1983, under his power to redress those violations, the Hawaii Bank Examiner caused MFC to be placed into receivership. The receiver, Thrift Guaranty Corporation of Hawaii, began paying off MFC's depositors, and, pursuant to its 1977 authorizing legislation, took over the depositors' claims against MFC. Meanwhile, Yamamoto sought Chapter 11 protection for MFC in the United States District Court.

When the dust settled, the District Court found that MFC's debts so exceeded its assets that its stock was worthless, and that a plan of reorganization liquidating MFC was proper. In *Manoa Finance I,* the Ninth Circuit affirmed the liquidation order, holding that Yamamoto lacked standing to contest the liquidation order in his personal capacity. Although the time to obtain this Court's review of that ruling or the liquidation order itself has expired, Yamamoto now seeks such review via an appeal in a routine contract matter in which the Chapter 11 Trustee claimed, and Yamamoto admitted, that Yamamoto in his personal capacity owed MFC in excess of $1.6 million on the basis of personal promissory notes. The target of Yamamoto's belated claims, a public spending measure passed by the Hawaii legislature to facilitate the liquidation plan, did not displace anyone's vested rights or bankruptcy entitlements. Rather, that law simply fostered the Thrift Guaranty Corporation's purchase of depositor claims against MFC, and assumption of the risk of prosecuting those claims in Chapter 11.

A. The Regulatory Background.

Since Hawaii's earliest days as a Territory, the Hawaii legislature has responded to the reality that those who take in deposits and make loans do not always conduct their business in a safe, responsible manner. At the time MFC was placed into receivership, this response provided two lines of protection for depositors[1] investing in industrial loan companies such as MFC, and, by the same token, left regulatory and financial burdens squarely upon the equity shareholders in such concerns.

First, Hawaii legislated standards of care that industrial loan companies were required to observe on pain of dissolution. Before 1937, industrial loan companies were subject to sanction only if, for example, the Bank Examiner could show that a company's continued operation "would be hazardous to the public."[2] In the Industrial Loan and Investment Act, the Legislature imposed objective capitalization, diversification, debt/equity, and liquid reserve requirements, *see* Act of May 17, 1937, ch. 231, 1937 Hawaii Sess. L. at 207, 209, 211, 212. In the period leading to MFC's collapse, Hawaii's legislated conditions for continued

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[1] Hawaii industrial loan companies are not empowered to take in deposits due on demand, but only to issue certificates for the payment of money. *See* Act of May 17, 1937, ch. 231, § 1, 1937 Hawaii Sess. L. at 208, *codified at* Hawaii Rev. Stat. § 408-14(6) (1985). For sake of simplicity, amounts paid for such certificates will nevertheless be referred to as deposits and those holding such certificates will be referred to as depositors.

[2] Act of May 29, 1925, ch. 268, § 3, 1925 Hawaii Sess. L. 383, 384. *See also* Act of April 27, 1931, ch. 148, § 2, 1931 Hawaii Sess. L. 144, 144-45 (authorizing Bank Examiner to issue desist orders and take control of noncomplying companies), *as amended and codified,* Hawaii Rev. Stat. § 401-5 (1985).

operation of an industrial loan concern included, among others, a maximum ten-to-one ratio of debt to equity.[3] An industrial loan company's failure to maintain an adequate capital base authorized the Hawaii Bank Examiner to place the company into receivership. Act of May 17, 1937, ch. 230, § 6, 1937 Hawaii Sess. L. 90, 93, *as amended and codified,* Hawaii Rev. Stat. § 401-12 (1985).

Second, as a consequence of the failure of several large industrial loan concerns in the mid-1970s, and the massive loss of "consumer confidence in this industry," the Legislature in 1977 enacted the Hawaii Industrial Loan Company Guaranty Act ("HILCGA"). *See* Act of April 2, 1977, ch. 2, § 1, 1977 Hawaii Sess. L. 3-4. As enacted, HILCGA required industrial loan companies, as a condition of continued operation, to become members of the Thrift Guaranty Corporation of Hawaii ("TGCH"). Hawaii Rev. Stat. § 408A-4 (1985). TGCH, in turn, was required by law to create a pool of liquid reserves, subsidized first by a loan of $20 million from the State of Hawaii, but ultimately paid by assessments on member institutions. *Id.* § 408A-10; ch. 2, § 4, 1977 Hawaii Sess. L. 13-14. If a member company were adjudicated bankrupt or placed in receivership, HILCGA author-

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[3] Act of May 23, 1972, ch. 113, § 1, 1972 Hawaii Sess. L. 421, 422, *as amended and codified,* Hawaii Rev. Stat. § 408-14(c) (1985); *see also* Act of May 16, 1979, ch. 71, § 2, 1979 Hawaii Sess. L. 145-46 (mandated seven percent liquid reserve), *codified at* Hawaii Rev. Stat. § 408-14(d) (1985); Act of May 5, 1977, ch. 28, § 1, 1977 Hawaii Sess. L. 36 ($300,000 capitalization level), *codified at* Hawaii Rev. Stat. § 408-13 (1985); Act of April 27, 1931, ch. 148, 1931 Hawaii Sess. L. 144 (requirement of "safe" and "authorized" operation), *codified at* Hawaii Rev. Stat. § 401-5 (1985).

ized the Bank Examiner to direct TGCH forthwith to pay each depositor up to $10,000 from the liquidity pool. *Id.* § 408A-14(a). As enacted, however, the law clearly stated that

> Whenever the guaranty corporation makes payments [to a thrift account holder], it shall be subrogated to all rights of the thrift account holder up to the amount of its payment, and shall be entitled to repayment in full from the estate of the member prior to any distribution to the thrift account holder to whom it has made payment.

1977 Hawaii Sess. L. at 10, *codified at* Hawaii Rev. Stat. § 408A-14(c) (1985). Thus, HILCGA simply required TGCH, to the extent its liquidity pool permitted, to purchase and prosecute depositors' claims against any industrial loan corporation in receivership or bankruptcy. Shareholders in any failed industrial loan company would be neither better off, nor worse off than in the absence of HILCGA's scheme of protection.

B. Events Leading to Liquidation of Manoa Finance Company, Inc.

1. The Chapter 11 Proceedings Leading to *Manoa Finance I.*

MFC was incorporated as an industrial loan company in 1960, and, by 1970, had apparently accumulated assets in excess of $26 million. *See* Pet. App. I-11. Its shares were owned by Manoa Enterprise, Inc., Pet. App. F2-2, and Hirotoshi Yamamoto, the Petitioner here, served as MFC's director, Pet. App. F1-2, and manager, Pet. App. I-11. By the early 1980s, MFC generated large losses, exceeding $8 million in 1983 alone. *Id.* Because MFC had exceeded

the debt/equity ratio allowed by Hawaii law, and violated other state-law rules, the Hawaii Bank Examiner in February, 1983 caused MFC to be placed into receivership. Pet. at 2. The State of Hawaii Circuit Court appointed TGCH receiver and TGCH began to make payments to depositors under HILCGA, thereby taking on depositors' claims against MFC. Pet. App. I-12, I-13; Hawaii Rev. Stat. § 408A-14(c) (1985). On February 10, 1983, MFC filed in the United States Bankruptcy Court for the District of Hawaii under Chapter 11 of the Bankruptcy Act of 1978, as amended, 11 U.S.C. §§ 1101-74 (1982). *See* Pet. App. F. In July, 1983, the Bankruptcy Court appointed Respondent Charles E. Klenske as Trustee. Pet. App. I-12.

2. Manoa Finance Company's Massive Liabilities.

Although MFC submitted balance sheets to the Bankruptcy Court claiming net capital in excess of $4.3 million, as the Trustee reported to MFC's creditors in December, 1983, those statements failed properly to account for inter-company loans amongst MFC and its subsidiaries, and overestimated the value of receivables in violation of accepted accounting principles. *See* Pet. App. G-2. Consequently, a more accurate picture MFC's capital account at the beginning of the Chapter 11 case, prepared by the certified public accounting firm of Alexander Grant & Company, showed negative equity in excess of $16.8 million. *See id.;* Pet. App. I-12. As the Chapter 11 proceeding progressed, the Trustee sold substantial portions of MFC's real estate and other property. Pet. App. I-12. Nonetheless, as late as June 1985, the Trustee reported that MFC's liabilities still exceeded the book value of its assets by at least $10.3 million.

See id. Even this proof that MFC was bankrupt failed to recognize that many of MFC's assets were, "in the Trustee's opinion, uncollectable." *See id.* At most, MFC's cash and assets totalled $30.8 million. *Id.* at I-9, I-14. By June 1985, depositor claims alone, about $45 million at the start of the Chapter 11 case, remained at $29.9 million, with TGCH and others holding claims of $14.1 million. *Id.* at I-12, I-13.

3. The State of Hawaii's Infusion of Funds to Subsidize Depositor Interests.

MFC's demand for federal protection thus placed tremendous strains on TGCH's ability to discharge its function of paying depositor claims in exchange for the depositors' rights under Chapter 11. *See* Pet. App. G-2. HILCGA was originally structured to raise only about $9 million from assessments on TGCH member institutions, *see* 1977 Hawaii Sess. L. at 3, 9, and, even in the event of exhaustion of the liquidity pool, TGCH was authorized to make emergency assessments that would likely raise only about $5 million annually. *Id.* Although the reduction in depositor claims from $45 to $29 million was in large part a consequence of TGCH's payment of $12.6 million under an "advance payment" program, Pet. App. I-13, by February 1985 the Hawaii Senate Committee on Consumer Protection found that TGCH "has ceased to function effectively and has no current funds to provide immediate redress to the aggrieved depositors." Hawaii Sen. Stand. Comm. Rep. No. 225-85, *reprinted in* 1985 Hawaii Sen. J. 991.

To facilitate immediate relief to depositors without committing the State itself to purchase depositors' claims, the Hawaii Legislature authorized additional loans of up to $9.5 million of public funds to TGCH

on the condition that such funds would be used to pay depositor claims against MFC. Act of June 3, 1985, ch. 187, § 5, 1985 Hawaii Sess. L. 316, 317 ("Act 187"), Pet. App. H-3. Act 187 also conditioned use of public funds on the Bankruptcy Court's confirmation, by June, 1986, of a Chapter 11 plan that returned to MFC's depositors within 90 days of confirmation any amounts they would have otherwise received from TGCH had MFC's collapse not already drained the liquidity pool. *Id.* §§ 5(1)(A), 5(2)-(3).

To further protect the fisc, the Legislature imposed, as an added condition on TGCH's receipt of additional loans, the requirement that TGCH's property, including any received from MFC in consequence of a reorganization plan, must serve as collateral for Act 187 loans. Act 187, § 5(4), Pet. App. H-4. Act 187 further prevented TGCH from impairing the value of that collateral by makiing sales of TGCH property subject to approval by the Hawaii Bank Examiner. *Id.* Act 187 also reaffirmed TGCH's continuing obligations to the State on loans made to TGCH from 1977 to 1983 pursuant to HILCGA's original authorizing legislation. *Id.* § 7, Pet. App. H-7.

Thus, none of the relief to depositors afforded by Act 187 came at the expense of MFC's equity shareholders. Rather, relief was contingent on TGCH's duty to finance the difference between Act 187 funds and remaining depositor claims, a sum of about $20 million. Only if TGCH could assemble such financing, and persuade the Bankruptcy Court to adopt a plan satisfying Act 187 and the Bankruptcy Act, would funds be released. *Id.* § 5, Pet. App. H-3.[4] Far from

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[4] Because 1983 amendments to HILCGA required industrial

interfering with any vested right, or any rule of bankruptcy law, Act 187 simply facilitated a routine substitution of one large creditor, TGCH, for the thousands of individuals whose hard-earned savings had been frozen because of MFC's demand for Chapter 11 relief.

4. The Plan of Reorganization and the Liquidation Order Affirmed in *Manoa Finance I.*

On August 27, 1985, MFC's Chapter 11 Trustee filed a proposed plan of reorganization complying with Act 187, whereby $8 million in Act 187 funds lent to TGCH, and $19.5 million raised by TGCH's member institutions, would be exchanged with the estate for MFC's assets, then valued at $27.5 million. Pet. App. I-10, I-13, I-14. The purchase funds would then be combined with $3.3 million from MFC's cash reserves, and about $1.05 million from other sources, and used to pay superpriority claims allowed under 11 U.S.C. § 507(a), and, under TGCH supervision, MFC's depositors. *See* Pet. App. I-8, I-9. Secured creditors would not be paid in cash, but rather would be left to their state-law remedies. *Id.* Other claims against MFC, including TGCH's $12.6 million claim arising out of its purchase of depositor claims to date,

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loan companies to secure liquidity protection from the Federal Deposit Insurance Corporation no later than June 30, 1984, if depositors' claims accruing as of the switchover date were bought by TGCH pursuant to Act 187, or otherwise extinguished, TGCH's role in providing liquidity protection would be fully discharged. *See* Act of June 8, 1983, ch. 233, § 2, 1983 Hawaii Sess. L. 481, 483, *codified,* Hawaii Rev. Stat. § 408A-4 (1985). The Legislature provided that upon confirmation of a Chapter 11 plan for MFC, TGCH's power to exact payments for the liquidity pool would be terminated. Act 187, § 6, Pet. App. H-6.

would be *waived* if MFC's equity shareholders took nothing under the plan and MFC's stock were cancelled. *Id.* at I-8, I-9, I-12. Thus, although MFC was liquidated and deprived of a "right" to realize unrealistic, speculative future gains on its assets, the likely losers under the plan were TGCH, and the State of Hawaii, which bore the risk that MFC's assets might never suffice to repay TGCH's Act 187 or other borrowings necessitated by MFC's collapse.

Although Yamamoto disclaimed on his petition for Chapter 11 relief having even an indirect interest in MFC, Pet. App. F2-2, he appeared, *pro se,* in the Bankruptcy Court in Honolulu to contest the proposed plan, claiming that his rights as a shareholder in Manoa Enterprise, Inc., which owned MFC's common stock, were prejudiced by the Trustee's refusal to value MFC as a going concern.[5] The Trustee thus objected to Yamamoto's standing to object.[6] The Trustee also claimed Yamamoto's contention that MFC should be evaluated as a going concern was ill-founded because MFC was properly subject to liquidation under 11 U.S.C. §§ 1123(a)(5)(D) and 1129(a)(11), and that, because no lower class of creditors would receive anything, the plan complied with the "fair and equitable" standard for nonconsensual reorganization plans.[7] The District Court overruled

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[5] Objections to Trustee's Plan of Reorganization, *In re Manoa Finance Co.*, Bankr. No. 83-65 (D. Hawaii Bankr. filed Sept. 23, 1985), *reprinted at* Respondent Klenske's Appendix D.

[6] Confirmation Trial Brief 16, *id.* (D. Hawaii Bankr. filed Sept. 23, 1985); Tr. at 5-6, *id.* (filed Sept. 30, 1985).

[7] 11 U.S.C. § 1129(b)(2); *see* Response of Charles R. Klenske, Chapter 11 Trustee, to Objection of Hirotoshi Yamamoto to Con-

Yamamoto's objection and confirmed the plan on October 2, 1985. *See* Pet. App. J-1, J-4. After Yamamoto appealed, the United States Court of Appeals for the Ninth Circuit summarily affirmed the District Court's liquidation order and dismissed Yamamoto's appeal for want of standing. *In re Manoa Finance Company,* No. 85-2692 (9th Cir. Dec. 30, 1985) ("*Manoa Finance I*"), App. E, *infra.*[8] No petition for rehearing was filed, and the time to seek this Court's review of

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firmation of Chapter 11 Plan of Reorganization at 2-4, *In re Manoa Finance Co.*, Bankr. No. 83-65 (D. Hawaii Bankr. filed Sept. 30, 1985).

[8] Prior to the Ninth Circuit's decision in *Manoa Finance I,* the Trustee, on behalf of the estate, and Yamamoto, *pro se,* stipulated to a dismissal of the appeal if Yamamoto could bring "other actions or proceedings against other parties related to or involved with Manoa Finance Company, Inc." App. C. The Clerk of the Court of Appeals entered a dismissal in No. 85-2692 on December 17, 1985, App. D. Apparently as a consequence, the lower court's docket sheet does not reflect entry of *Manoa Finance I.* For the following reasons, we believe that this situation is likely explained as an administrative error, and, that, even if the decision in *Manoa Finance I* were void, the parties' rights would be unaffected.

First, the Ninth Circuit, particularly during the time in which it would be timely to file a motion to vacate the clerk's December 17, 1985, order, was entitled to protect its jurisdiction by entering its December 30, 1985, order, which denied Yamamoto's claimed right, implicitly granted by the clerk's dismissal, to limit the collateral consequences of the District Court's confirmation order. *See Bender v. Williamsport Area School District,* 106 S. Ct. 1326, 1331 (1985). Second, even if *Manoa Finance I* were a nullity, Petitioner is left no better off for purposes here by his stipulation to dismiss. That stipulation allowed "other actions or proceedings against *other parties,*" App. C (emphasis added). Petitioner did not preserve *any* claim, such as a shareholder claim, against MFC's estate.

Manoa Finance I by writ of certiorari expired March 30, 1986.

C. The Adversary Proceedings Below Leading to *Manoa Finace II.*

Before Act 187 was passed, and the reorganization plan confirmed, the Trustee commenced an adversary proceeding in the District Court under 28 U.S.C. § 1334 (1982) to collect on numerous claims, including claims that Yamamoto had failed to pay about $1.1 million due to MFC on personal notes executed between 1968 and 1977. Complaint ¶¶ 75, 79, 131, 133, *Klenske v. Yamamoto,* No. 83-222 (D. Hawaii filed Dec. 16, 1983), App. F. The Trustee moved for partial summary judgment on the contract claims and the District Court granted the motion on November 14, 1984, and certified the judgment pursuant to Rule 54(b), Fed. R. Civ. P., and Bankruptcy Rule 7054(a). Pet. App. A-1, A-5. At the time judgment was entered, the amount due, including interest, totalled $1.67 million. *Id.* at A-3. At no time in the District Court did Yamamoto assert as a counterclaim or basis for set-off his once-removed equity interest in MFC.[9]

Yamamoto appealed, and the Court of Appeals, after the case was submitted on November 19, 1985, affirmed on February 4, 1986, more than a month after *Manoa Finance I. In re Manoa Finance Company,* 781 F.2d 1370 (9th Cir. 1986) (per curiam) ("*Manoa Finance II*"), Pet. App. B. The Court of

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[9] Answer to Complaint, *In re Manoa Finance Co.*, No. 83-222 (D. Hawaii filed Jan. 18, 1984), App. G, *infra. See* Bankr. R. 7013 ("[A] party sued by a trustee . . . [may, but] need not state as a counterclaim any claim which he has against the debtor, his property, or the estate . . . .").

Appeals first held that it had jurisdiction under 28 U.S.C. § 1291 (1982), and then rejected Yamamoto's contention that the District Judge should have recused himself for lack of impartiality. 781 F.2d at 1372-73, Pet. App. B-2—B-5. The court then affirmed the Trustee's partial summary judgment on the merits. *Id.* at 1374, Pet. App. B-6. In a petition for rehearing Yamamoto reasserted the claim made in MFC's Chapter 11 petition that in fact MFC had net positive equity in excess of $4 million, and alleged, as in *Manoa Finance I,* that Act 187, by enabling TGCH to take over MFC's assets by extinguishing depositor claims, violated the Due Process Clause and impermissibly "interfere[d] with the proceedings in the bankruptcy court." Petition for Rehearing at 2-3, No. 84-2807 (9th Cir. filed Feb. 20, 1986), App. H, *infra; cf.* Notice of Appeal, Bankr. No. 83-65 (D. Hawaii Bankr. filed Oct. 11, 1985), App. B, *infra.* On June 24, 1986, the Court of Appeals denied rehearing. Pet. App. C.

REASONS FOR DENYING THE WRIT

Act 187, the focus of Petitioner's claims in this Court, is plainly the sort of legitimate State spending measure that would be routinely upheld under this Court's precedents. But even if Act 187, or the underlying Chapter 11 proceedings that triggered its operation, presented any substantial federal questions, this case, which concerns Petitioner's debts to MFC, is not a permissible avenue for litigating those issues. Whether the adversary proceeding below might ever have been a proper forum to raise a federal challenge to Act 187, under long-established rules of claim and issue preclusion, *Manoa Finance I* clearly bars the

interposition of Petitioner's putative federal defenses to the collection of debts he admits are due and owing. Far from establishing any of the predicates for review under this Court's Rule 17, the instant Petition advocates positions squarely foreclosed by well-settled policies and precedents. Accordingly, the Petition should be denied.

I. The Petitioner Lacks Standing to Interject the Claimed Federal Defenses to His Liability to the Estate.

A.

Fairly stated, Yamamoto's claim is that his $1.67 million debt to MFC should be reduced by some asserted amount equal to what he claims was the true value of MFC's shareholder equity after all liabilities had been accounted for. *See* Petition at 2-3, 6. But, as he admits, *id.* at 2, Yamamoto never held equity interests in MFC. Those interests, when MFC existed, were held by Manoa Enterprise, Inc., which was not named and did not intervene in the adversary proceedings below, and has not appeared in this Court through duly appointed counsel. *See id.* Thus, Yamamoto's claim rests on the suggestion that, as a *pro se* litigant, he is entitled to pursue the claims of Manoa Enterprise, Inc., because he is Manoa Enterprise's sole shareholder and chief officer. *See* Pet. at 2; Pet. App. E9-2.

Even if Yamamoto were authorized to represent Manoa Enterprise, Inc., in his official capacity, *see* Hawaii Rev. Stat. § 415-50 (1985), and even if that would suffice to give rise to a case or controversy if Manoa Enterprise were a party below, *see Bender v. Williamsport Area School District,* 106 S. Ct. 1326,

1333 & n.7 (1986), the basis for Yamamoto's presence in his official capacity is lacking because Yamamoto never so appeared in the courts below. To paraphrase *Bender*, because the judgment against Yamamoto was not in his official capacity, "he has no standing to appeal in that capacity." 106 S. Ct. at 1332. Yamamoto might have moved in the Bankruptcy Court under Bankruptcy Rule 7024 to allow Manoa Enterprise to intervene; even after *Manoa Finance II,* Yamamoto might have suggested on rehearing below that the District Court's judgment should be vacated and remanded to give Manoa Enterprise leave to enter and claim against the Trustee. But he never did so, and that failure may not be lightly excused even though this case arises from the inferior federal courts. *See Hoover v. Ronwin,* 466 U.S. 558, 574 n.25 (1984); *Delta Airlines, Inc. v. August,* 450 U.S. 346, 362 (1981); *McGoldrick v. Compagnie Generale Transatlantique,* 309 U.S. 430, 434 (1940); *cf. Newport v. Fact Concerts, Inc.,* 453 U.S. 247, 255-56 (1981). Because there is no party here with standing to assert the claims of MFC's equity shareholders, the Court has no jurisdiction to hear such claims.

B.

The Article III defects burdening the instant Petition are even more salient given that the very question of Petitioner's standing to litigate the rights of Manoa Enterprise, Inc., against MFC's estate were resolved against Yamamoto in *Manoa Finance I* before the Court of Appeals decided *Manoa Finance II.* The Ninth Circuit's unappealed, summary order stated explicitly that Yamamoto "has no standing to appeal the district court's order approving the plan of re-

organization." *Manoa Finance I,* No. 85-2692 (9th Cir. Dec. 30, 1985), App. E, *infra.*

It is well settled that jurisdictional issues resolved by a binding judgment are entitled to the same preclusive effect as any other matters decided in litigation. *See Underwriters National Assurance Co. v. North Carolina Life & Accident & Health Insurance Guaranty Association,* 455 U.S. 691, 706, 714 (1982) (quoting *Durfee v. Duke,* 375 U.S. 106, 111 (1963)). And, because Yamamoto had a full opportunity to have *Manoa Finance I* overturned on rehearing, on rehearing *en banc,* or on direct review to this Court, there is no valid basis for redeciding the issue of Yamamoto's standing here. *See Kremer v. Chemical Construction Co.*, 456 U.S. 461, 484 (1982) (judicial review as satisfying due process concerns); *cf. Ohio Civil Rights Comm'n v. Dayton Christian Schools,* 106 S. Ct. 2718, 2724 (1986) (same). *See also supra* n.6 (notice of standing defects in the District Court). Given the time limits on this Court's appellate jurisdiction imposed by 28 U.S.C. § 2101, *Manoa Finance I* jurisdictionally bars review here. *Manoa Finance I* held that Yamamoto lacked standing to assert an attack on Act 187's effects, or on the reorganization plan generally, and, accordingly, he has no standing to do so now.

II. Petitioner's Substantive Claims are Otherwise Barred by the Reorganization Plan Litigation.

Even if this Court were not bound at all by Article III constraints, the Ninth Circuit's affirmation of the District Court's liquidation order in *Manoa Finance I* still precludes the instant federal challenges to the judgment below in *Manoa Finance II.* First, by leaving the District Court's confirmation order intact,

Manoa Finance I conclusively establishes that by June, 1985: (1) "the present market value of MFC's assets (aside from cash) [wa]s [only] approximately $27.5 million"; (2) even on a book value basis, MFC's liabilities exceeded assets by "approximately 10.3 million"; and, hence, (3) "[e]ven if the Trustee were able to realize the fair market values of MFC's assets, there would be insufficient funds available to return any amount [to] MFC's shareholders." Pet. App. I-12, I-13, I-14.

Under established issue preclusion principles, these facts are not subject to relitigation here. *See Nevada v. United States,* 463 U.S. 110, 130 n.11 (1983) (quoting *Parklane Hosiery Co. v. Shore,* 439 U.S. 322, 326 n.5 (1979)). Because a violation of the Just Compensation Clause may be found only if "reasonable investment-backed expectations" have been defeated, *see McDonald, Sommer & Frates v. Yolo, County,* 106 S. Ct. 2561, 2566 (1986), the federal court judgment in *Manoa Finance I* thus negates any claim that Act 187 or the reorganization plan deprived MFC's equity shareholders of "their just due." Pet. at 6. *See also In re Chicago, Milwaukee, St. Paul and Pacific Railroad Co.,* 799 F.2d 317 (7th Cir. 1986) (Easterbrook, J.). Moreover, because the doctrine of claim preclusion bars "the parties or their privies from relitigating issues that were or could have been raised in [a prior] action[,]" *Federated Department Stores, Inc. v. Moitie,* 452 U.S. 394, 398 (1981), any claim that Act 187 is preempted by federal bankruptcy law, Pet. at 5-6, is likewise foreclosed. Because any attack on Act 187 or the reorganization plan could have been interposed in the confirmation proceeding that led to *Manoa Finance I,* those claims are barred even if the Bankruptcy Court's decision was incorrect. *Moitie,* 452 U.S.

at 398; *cf. Limbach v. Hooven & Allison Co.*, 466 U.S. 353, 362 (1984) ("manifest error" exception to rules of preclusion); *State Farm Insurance Co. v. Duel,* 324 U.S. 154, 162 (1945) (same).

That Act 187 was not enacted until 1985, whereas summary judgment on Yamamoto's notes was entered in 1984, does not affect the foregoing analysis. First, it is dubious whether Yamamoto justifiably failed to raise his indirect equity interest in MFC as a ground for offset in the adversary action because Act 187 was not yet law. But even if he did, the issue on rehearing below was whether the judgment should be vacated and the case remanded with leave, presumably given to Manoa Enterprise, Inc., to plead such an interest. The lower court correctly decided this issue because, in light of *Manoa Finance I*'s binding effects, amendment would be futile. *See Foman v. Davis,* 371 U.S. 178, 182 (1962). In sum, this case is identical to *Reed v. Allen,* 286 U.S. 191 (1932). As in *Reed,* had Yamamoto timely sought review in *Manoa Finance I*, this Court, "having both cases before it, might have afforded a remedy. . . . But this course [petitioner] neglected to follow." 286 U.S. at 198, *quoted, Moitie,* 452 U.S. at 400.[10]

A procedural bar here is especially warranted given that the proceeding Yamamoto would have this Court nullify is one for Chapter 11 reorganization. The entire purpose of Chapter 11, indeed all of bankruptcy law, is to reduce, as far as possible, a multitude of

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[10] Petitioner suggested below that the claims here were preserved by his stipulation in the appeal leading to *Manoa Finance I. See* Petition for Rehearing at 4, No. 84-2807 (9th Cir. filed Feb. 14, 1986), App. H, *infra.* This contention is without merit for the reasons stated in note 8, *supra.*

lawsuits against the estate to one comprehensive case.[11] Nothing would be more destructive of the purposes of the Bankruptcy Act than allowing claimants like Yamamoto, who had a full opportunity to raise challenges to a reorganization plan, to relitigate those issues in the guise of counterclaims designed to frustrate efforts to collect on debts admitted to be due and owing to the estate (and its successors).

III. Even if the Liquidation Order Could be Reviewed, Petitioner's Points of Error are Insubstantial.

Even if the reorganization case could be resuscitated, Yamamoto's points of error do not warrant review. Although Petitioner's precise contention is difficult to fathom, it appears to be his assumption that, as a result of enactment of HILGCA in 1977, MFC had no real duty to its depositors when it was shut down for violating state-law capitalization rules. It thus seems to be Yamamoto's belief that TGCH was solely responsible for paying depositor claims upon default, for, only if that were the case could MFC have been "a $21 million company seeking refuge under Chapter 11." Pet. at 3.

Although the State of Hawaii would submit that a measure that forced a financial institution to reassume obligations to depositors that had been assumed *in toto* by a system of deposit insurance would survive scrutiny in light of *Connolly v. Pension Benefit Guaranty Corporation,* 106 S. Ct. 1018 (1986), the Court is not faced with a legislated shifting of private rights that is even close to a measure that "completely de-

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[11] Bankruptcy Rule 7013, for example, encourages debtors of the estate, such as Yamamoto, to litigate what would otherwise be compulsory counterclaims in the Chapter 11 proceeding.

prive[d]" MFC "of whatever amount of money it [was] obligated to pay to fulfill its [contractual] liability." *Id.* at 1026 (upholding statute despite such effects). Contrary to Petitioner's suggestion, HILCGA never extinguished industrial loan company liability. Rather, it simply set up a means whereby, if an industrial loan concern were forced into receivership or bankruptcy, depositors would be paid by TGCH, and TGCH would take on depositors' claims against the illiquid company. Under HILCGA, whenever TGCH made payments to depositors, it became "subrogated to all rights of the thrift account holder up to the amount of its payment[.]" 1977 Hawaii Sess. L. at 10, *codified at* Hawaii Rev. Stat. § 408A-14(c) (1985). Rather than discharging MFC's liability, HILCGA simply substituted TGCH for the thousands of innocent individuals who had deposited their hard-earned funds with MFC.

Under these circumstances, Act 187's mere infusion of monies to allow TGCH to carry out its task could not run afoul of the Just Compensation Clause. *See Connolly,* 106 S. Ct. at 1018 (quoting *Penn Central Transportation Co. v. New York City,* 438 U.S. 104, 124 (1978)). Nor could it possibly give rise to the kind of interference with Congress's scheme for rearranging companies in financial distress that would raise a substantial issue under the Supremacy Clause. *Cf. Fidelity Federal Savings & Loan Association v. De la Cuesta,* 458 U.S. 141 (1982).[12] Seen for what it is, Act 187 is nothing more than a routine spending measure that is readily sustainable under this Court's

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[12] Indeed, this Court has recently expressed its concern that Congress's exercise of its Bankruptcy Clause powers should not be broadly read to interfere with traditional state functions. *See Kelly v. Robinson,* 107 S. Ct. 353 (1986).

precedents, *e.g., Dandridge v. Williams,* 397 U.S. 471 (1970). Certainly the Hawaii Legislature might rationally have concluded that MFC's innocent depositors, rather than its equity holders, were more deserving of relief from the public fisc. Here, that is all the Constitution requires. *See Williamson v. Lee Optical Co.,* 348 U.S. 483, 488 (1955).

Petitioners' remaining attacks on the reorganization plan, which implicate the Bankruptcy Court's application of Title 11, rather than Act 187, are also meritless, even if they are open to review. As the Trustee submitted, and as the Bankruptcy Court agreed, TGCH's assumption of more than $27.5 million of MFC's liabilities to depositors was, at confirmation, adequate consideration for transfer of MFC's assets, given the value of those assets, MFC's debts, and particularly in light of TGCH's decision to *waive* its $12.6 million claim against MFC arising out of assumption of depositor claims. The Trustee also stated that, even if MFC's assets generated unexpected profits, the proceeds would first be subject to unsatisfied depositor claims for lost post-petition interest. *See* Pet. App. at I-12. Petitioner has not shown that these findings are "illogical or implausible." *Anderson v. Bessemer City,* 470 U.S. 564, 577 (1984). Further review would thus only require this Court to add its imprimatur to the findings supporting the liquidation.

That TGCH, or the State of Hawaii, by virtue of its claims against TGCH, might realize speculative gains on the property transferred pursuant to the plan, Pet. at 3, cannot present any substantial federal question. A risk that a transferee in liquidation might wind up with what turns out to be a gold mine is always present in bankruptcy. But such speculative

gains do not enjoy substantive protection. *See Yolo County,* 106 S. Ct. at 2569 n.9; *cf. United States v. Security Industrial Bank,* 459 U.S. 70, 75 (1982). Congress has made plain that, if a reorganization plan is "fair and equitable," and otherwise meets the requirements of bankruptcy law, a corporation in Chapter 11 may be liquidated at the current, discounted value of its property.[13] The Trustee's plan amply met these standards, and the Bankruptcy Court was well within its authority in entering its order on October 2, 1985 confirming the plan. Claims by MFC's equity shareholders were properly extinguished, and Petitioner has received no less than his "just due."

CONCLUSION

For the foregoing reasons, the writ should be denied.

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[13] *See* 11 U.S.C. §§ 1123(a)(5)(D), 1129(a)(11), 1129(b)(2).

Respectfully submitted,

CORINNE K.A. WATANABE
Attorney General
Counsel of Record

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Counsel for the State of Hawaii

APPENDIX

APPENDIX A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF HAWAII

[Filed Oct. 2, 1985]
CASE NO. 83-0065
(Chapter 11)
FINDINGS OF FACTS AND
CONCLUSIONS OF LAW RE
CONFIRMATION OF PLAN
DATE: September 30, 1985
TIME: 1:30 p.m.

In re

MANOA FINANCE COMPANY, INC., a Hawaii corporation,

Debtor.

A hearing to confirm the "Plan of Reorganization (Including Disclosure Statement) proposed by Charles R. Klenske, Chapter 11 Trustee" dated August 16, 1985 (the "Plan"), was held before the undersigned United States District Judge on September 30, 1985.

The Court having considered the Plan, the evidence, both oral and documentary, presented by the Trustee in support of the Plan, the arguments of the counsel present at the hearing, the memoranda submitted by various parties, and for good cause shown, the Court hereby makes the following findings of fact and conclusion of law:

FINDINGS OF FACT

1. The Chapter 11 reorganization case of Manoa Finance Company, Inc., a Hawaii corporation, Debtor ("MFC") was commenced by the filing of an involuntary petition under Chapter 11 of the Bankruptcy Code on February 10, 1983.

2. The Court appointed Charles R. Klenske to act as Chapter 11 Trustee of MFC on July 1, 1983. Since that

date, Charles R. Klenske has acted as the duly-appointed and qualified Chapter 11 Trustee of MFC.

3. On August 19, 1985, the Trustee filed his "Notice of Motion for Order Authorizing the Filing of Plan of Reorganization Combined with Disclosure Thereon; Memorandum of Points and Authorities in Support Thereof" ("Motion"). On August 27, 1985, following a hearing on the Motion before this Court, the Court authorized the Trustee to distribute the proposed Plan to all creditors and equity security holders of MFC. The Court further established September 30, 1985 as the date for a hearing on confirmation of the proposed Plan.

4. Notice of the September 30, 1985 confirmation hearing was duly served by the Trustee on all creditors, equity security holders and other parties entitled to notice, along with copies of the proposed Plan.

5. There was an objection filed to confirmation of the Plan by Hirotoshi Yamamoto.

6. The Plan contemplates payment in full of the amounts owed to creditors whose claims are included in Classes 1, 2 and 3. These Classes are not impaired by the Plan, and are deemed to have accepted the Plan.

7. Classes 4, 5, 6 and 7 will receive nothing under the Plan, and are deemed to not have accepted the Plan.

8. The Plan complies with all provisions of Chapter 11 of the Bankruptcy Code and has been proposed in good faith and not by any means forbidden by law.

9. Each holder of a claim or interest has accepted the Plan, or will receive or retain under the Plan property of a value, as of the Effective Date of the Plan, that is not less than the amount that such holder would receive or retain if MFC were liquidated under Chapter 7 of the Bankruptcy Code on such date.

10. All payments made or promised by MFC or by a person acquiring property under the plan or by any other person for services or for costs and expenses, or in connection with the Plan and incident to the case, have been fully disclosed to the Court and are reasonable, or, if to be fixed after confirmation of the Plan, will be subject to the approval of the Court.

11. Because MFC will be dissolved following the confirmation of the Plan and the closing of MFC's case, there are no persons who are to be directors or officers or voting trustees of MFC following confirmation of the Plan and, consequently, the identities, qualifications and affiliations of any such persons are not required to be disclosed in the Plan. Similarly, it is not necessary for MFC's corporate charter to be amended pursuant to the Plan to prohibit the issuance of non-voting securities. The provisions of Chapter 11 which require regulatory approval for any rate changes set forth in a Chapter 11 plan of reorganization are inapplicable to MFC.

12. The Plan is feasible, because the Trustee will likely have the funds necessary to make the payments provided for in the Plan.

13. The Plan does not discriminate unfairly against claims and interests included in Classes 4, 5, 6 and 7.

14. The Plan is "fair and equitable" with respect to claims and interests included in Classes 4, 5, 6 and 7.

15. Creditors holding claims in Classes 6 and 7 have accepted the Plan.

16. The sale of assets to Thrift Guaranty Corporation of Hawaii ("TGC") contemplated by the Plan constitutes a liquidation of the assets of MFC. The Trustee is not conducting the business of MFC in connection with the sale to TGC.

17. Except as contemplated by the Plan, confirmation of the Plan is not likely to be followed by the liquidation

of MFC or the need for further financial reorganization of MFC.

18. Any of the foregoing findings of fact which are deemed to constitute conclusions of law are hereby incorporated as conclusions of law.

CONCLUSIONS OF LAW

19. The United States District Court has original subject matter jurisdiction over cases arising under Title 11 of the United States Code.

20. Such "notice and a hearing" as is required by the Bankruptcy Code and the Bankruptcy Rules with respect to the Plan has been duly given.

21. All the requirements of Section 1129 of the Bankruptcy Code required for confirmation of the Plan have been met.

22. The Trustee is authorized to carry out the provisions of the Plan, including the performance of his obligations under the proposed Agreement of Purchase and Sale Pursuant to Plan of Reorganization" attached as Exhibit A to the Plan.

23. The entry of this order, and the payment in full of Allowed Depositor Claims provided for in the Plan shall operate and constitute as a complete release, discharge and waiver of any and all claims, of whatever nature, whether legal or equitable, contingent, liquidated or unliquidated, which exist, may exist, have been asserted or might be asserted by the holders of Allowed Depositor Claims against TGC, any of its officers, directors, agents, employees or servants; its member institutions or their officers, directors, agents, employees and servants; and the State of Hawaii, and all of its officers, agents, employees, and servants. The effect of this order shall be to bar any action which has been commenced, or might hereafter be

commenced, against TGC or the State of Hawaii by holders of Allowed Depositor Claims arising from or related to the business or activities of MFC, or the issuance of thrift accounts by MFC.

24. The entry of this order and the payment in full of Allowed Depositor Claims shall operate as a dismissal with prejudice of the action filed on February 28, 1985 by the Official Creditors' Committee of MFC against TGC.

25. The provisions of Section 237-43 and 231-33(b) of the Hawaii Revised Statutes which pertain to payment of taxes under certain bulk transfers are inconsistent with federal law pertaining to the imposition of state taxes on bankrupt estates. Accordingly, neither the Trustee nor TGC is required to file the report of Bulk Sale with the Department of Taxation which is described in Section 237-43 of the Hawaii Revised Statutes, and the State of Hawaii is not authorized to collect any transfer tax from either the Trustee or TGC. Further, no lien in favor of the State of Hawaii shall attach to the assets sold to TGC under Section 231-33 (b) of the Hawaii Revised Statutes.

26. The Plan should be confirmed.

DATED: Honolulu, Hawaii, September 30, 1985.

/s/ SAMUEL P. KING
United States District Judge

APPENDIX B

UNITED STATES BANKRUPTCY COURT
DISTRICT OF HAWAII

[Filed Oct. 11, 1985]
CASE NO. 83-0065
(Chapter 11)

NOTICE OF APPEAL OF ORDER
Confirming Trustee Klenske's
Plan of Reorganization

DATED: OCTOBER 2, 1985

In Re:

MANOA FINANCE COMPANY, INC. a Hawaii Corporation

Debtor.

HIROTOSHI YAMAMOTO, voluntary petitioner, Chapter 11, and true debtor-in-possession, hereby files Notice of Appeal of Order Confirming Trustee Klenske's Reorganization Plan, which order was dated, october 2, 1985.

The specifities of the Plan being appealed are as follows:

ARTICLE I, C-3 Securities of MFC As of effective date, the outstanding Common and preferred stock of MFC shall be cancelled.

ARTICLE I, C-4 Disputed Claims

(ii) *DISTRIBUTION* .....

Any property remaining after all disputes over claims have been determined and all administration and othe claims have been paid in full *shall be returned to TGC. (Thrift Guaranty Corporation)*

Underscore and parenthesis supplied.

The basis of this Appeal is the 14th Amendment to the Constitution of the United States.

This Amendment prohibits the State of Hawaii from confiscating the property rights of the Preferred and Common Stockholders of Manoa Finance Company, in favor of Thrift Guaranty Corporation. To wit:

AMENDMENT 14

Civil Rights

This amendment was proposed on June 13, 1866, and ratified on July 9, 1868.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

DATED: Honolulu, Hawaii, October 11, 1985

/s/ HIROTOSHI YAMAMOTO
HIROTOSHI YAMAMOTO, pro se

APPENDIX C

Of Counsel:

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Telephone: (213) 553-3939

Attorneys for Appellee Charles
R. Klenske, Chapter 11 Trustee

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CA. No. 85-2692

DC Hawaii Cv-83-00065

STIPULATION OF DISMISSAL OF APPEAL

In re

MANOA FINANCE COMPANY, INC., a Hawaii corporation,

Debtor.

[Received in the Court of Appeals Dec. 13, 1985]

STIPULATION OF DISMISSAL OF APPEAL

Appellant Hirotoshi Yamamoto and Appellee Charles R. Klenske, Trustee, hereby stipulate that (1) this appeal, initiated by the Notice of Appeal of Order filed by Appellant on October 11, 1985, shall be dismissed, (2) each party to this appeal shall bear his own costs, and (3) the dismissal of this appeal by Hirotoshi Yamamoto shall not prevent his from instituting other actions or proceedings against other parties related to or involved with Manoa Finance Company, Inc.

DATED: Honolulu, Hawaii December 9, 1985.

/s/ HIROTOSHI YAMAMOTO
Hirotoshi Yamamoto, Pro Se
Appellant

/s/ JAMES FEDER
James J. Feder

Attorney for Charles R. Klenske, Trustee

Appellee

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

FILED
DEC. 17, 1985
CA NO. 85-2692

DC NO. CV 83-00065

HAWAII

ORDER

In re:

MANOA FINANCE COMPANY, INC., a Hawaii corp.,

Debtor.

CHARLES E. KLENSKE, Trustee in reorganization,
Plaintiff/Appellee,

-vs-

GEORGE WM. M. GOO; ROBERT S. TERAMOTO, *et al.*,
Defendants.

and

HIROTOSHI YAMAMOTO,
Defendant/Appellant,

ENTRY OF DISMISSAL

Pursuant to Rule 42 (b), Federal Rules of Appellate Procedure, and the stipulation submitted by the parties, dismissal of this appeal is herewith entered.

(XX) Each party to bear its own costs.

( ) Costs to be apportioned as agreed in the submitted stipulation.

A certified copy of this order sent to the district court shall act as and for the mandate of this court.

FOR THE COURT:

Cathy Catterson
Clerk of Court
By: /s/ DAVE DOMINY
Dave Dominy
Deputy Clerk

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

DEC 30 1985

CATHY A. CATTERSON
CLERK, U.S. COURT OF APPEALS

No. 85-2692

DC# C-83-00065
Hawaii

ORDER

In re:

MANOA FINANCE COMPANY, INC., a Hawaii corporation,

Debtor.

CHARLES E. KLENSKE, Trustee,

Plaintiff-Appellee,

vs.

GEORGE WH. M. GOO, *et al.*,

Defendants,

and

HIROTOSHI YAMAMOTO,

Defendant-Appellant,

Before: NELSON, REINHARDT and WIGGINS, Circuit Judges

Appellant has no standing to appeal the district court's order approving the plan of reorganization. The order is summarily affirmed.

APPENDIX F

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF HAWAII

[Filed Dec. 16, 1983]

BK. NO. 83-65

In Re

MANOA FINANCE COMPANY, INC., a Hawaii corporation,

Debtor.

ADVERSARY PROCEEDING
NO. 83-222

COMPLAINT; SUMMONS; EXHIBITS 1-29

CHARLES R. KLENSKE, Trustee in Reorganization for MANOA FINANCE COMPANY, INC.,

Plaintiff,

vs.

HIROTOSHI YAMAMOTO, GEORGE W. H. GOO, ROBERT S. TERAMOTO, MASAYUKI TOKIOKA, SHIZUKO YAMAMOTO, SAKAE TAKAHASHI, ELIZABETH TAKAHASHI, MAKAHA LAUNDRY, INC., MAKAHA REEF, INC., TAKAHASHI-YAMAMOTO JOINT VENTURES, SSK INVESTMENTS, INC. and ASIAN AMERICAN MEDICAL CLINIC OF SAN FRANCISCO,

Defendants,

COMPLAINT

COMES NOW Plaintiff CHARLES R. KLENSKE, Trustee in Reorganization for Manoa Finance Company, Inc., by and through his attorneys, Carlsmith, Carlsmith, Wichman and Case, and Jones, Day, Reavis & Pogue, and for Complaint against Defendants HIROTOSHI YAMAMOTO, GEORGE W. H. GOO, ROBERT S. TERAMOTO, MASAYUKI TOKIOKA, SHIZUKO YAMAMOTO, SAKAE TAKAHASHI, ELIZABETH TAKAHASHI, MAKAHA

LAUNDRY, INC., MAKAHA REEF, INC., TAKAHASHI-YAMAMOTO JOINT VENTURES, SSK INVESTMENTS, INC. and ASIAN AMERICAN MEDICAL CLINIC OF SAN FRANCISCO, alleges and avers as follows:

COUNT I

1. Plaintiff CHARLES R. KLENSKE, Trustee in Reorganization for Manoa Finance Company, Inc. (hereinafter referred to as "Plaintiff"), was appointed the Trustee in Reorganization for Manoa Finance company, Inc., a corporation organized and existing under the laws of the State of Hawaii, in the United States Bankruptcy Court for the District of Hawaii, on June 30, 1983.

2. Jurisdiction of this matter is conferred upon this Court by the provisions of 28 U.S.C. § 1471 (Supp. 1983) and 28 U.S.C. §§ 1334 and 1331.

3. Plaintiff is of the information and belief and on such information and belief alleges and avers that Defendants HIROTOSHI YAMAMOTO, GEORGE W. H. GOO, ROBERT S. TERAMOTO, MASAYUKI TOKIOKA, SHIZUKO YAMAMOTO, SAKAE TAKAHASHI and ELIZABETH TAKAHASHI are and were at all times relevant herein residents of the City and County of Honolulu, State of Hawaii.

[Material Deleted in Printing]

COUNT VIII

73. Plaintiff repeats and realleges and incorporates by reference herein the allegations contained in paragraphs 1 through 72 of the Complaint as though the same were more fully set forth herein.

74. Manoa Investment Company is a wholly-owned subsidiary of MFC.

75. At various times during the period from December 30, 1968 to December 31, 1975, Defendants YAMAMOTO,

for value received, executed and delivered to Manoa Investment Company, Inc. certain promissory notes, totalling in the aggregate the sum of NINE HUNDRED SEVENTY-EIGHT THOUSAND FOUR HUNDRED NINETY-SEVEN AND 12/100 DOLLARS ($979,497.12); copies of the said promissory notes are attached hereto as Exhibits 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 and made a part hereof by reference.

76. Manoa Investment Company, Inc. has assigned the aforesaid promissory notes to MFC.

77. Under the terms of the aforesaid promissory notes, the notes are payable on demand.

78. Plaintiff has made due demand upon Defendant YAMAMOTO for payment of the said notes but he has failed and neglected to pay the amounts due under the said notes.

79. There is now due and owing from Defendant YAMAMOTO the principal balance of NINE HUNDRED SEVENTY-EIGHT THOUSAND FOUR HUNDRED NINETY-SEVEN AND 12/100 DOLLARS ($978,497.12), together with unpaid accrued interest thereon to November 30, 1983 of FOUR HUNDRED TEN THOUSAND FOUR HUNDRED SIXTY-SEVEN AND 54/100 DOLLARS ($410,457.54), for a total amount due and owing of $1,388,964.66, plus the appropriate per diem rates from and after November 30, 1983, plus attorneys' fees and costs.

[Material Deleted in Printing]

COUNT XVII

130. Plaintiff repeats and realleges and incorporates by reference herein the allegations contained in paragraphs 1 through 129 of the Complaint as though the same were more fully set forth herein.

131. On or about May 1, 1977, one Japan Center Car Wash, Inc. made, executed and delivered to National Braemar, Inc. a promissory note in the principal sum of $131,499.83; said monies were loaned by National Braemar, Inc. to Japan Center Car Wash, Inc. for improvements to be built on the aforesaid Car Wash Property; a copy of the said promissory note is attached hereto as Exhibit 29 and made a part hereof by reference.

132. In addition, National Braemar, Inc. advanced the total sum of $19,885.23 to Japan Center Car Wash, Inc., also for improvements to be built on the aforesaid car wash property.

133. Defendant YAMAMOTO assumed all of the liabilities of Japan Center Car Wash, Inc. upon the latter's dissolution.

134. National Braemar, Inc. has assigned the aforesaid promissory note and receivables to MFC.

135. The aforesaid promissory note matured on May 1, 1980, but Defendant YAMAMOTO has failed and neglected to pay the same, and all sums due thereunder (including the principal balance of $151,499.83 and interest at ten percent (10%) interest per annum, totalling $41,536.71 as of November 30, 1983 and $41.51 per diam thereafter, plus attorneys' fees and costs) are due and payable.

136. In addition, Defendants YAMAMOTO owes the advanced sum of $19,885.25 plus interest to MFC.

[Material Deleted in Printing]

WHEREFORE, Plaintiff prays that judgments be entered in his favor and against Defendants, and each of them, jointly and severally, as follows:

1. For damages in an amount to be shown at the time of trial;

2. For an order requiring Defendants SSK INVESTMENTS, INC. and ASIAN AMERICAN MEDICAL

CLINIC OF SAN FRANCISCO to make the payments on their purchase of the Car Wash Property to MFC or to interplead the said payments into the court;

3. For punitive damages in the sum of $1,000,000.00;

4. For judgment in the amount of treble the damages suffered by MFC, to be shown at the time of trial, or $1,000, whichever is greater;

5. For costs of suit incurred herein, including attorneys' fees and costs; and

6. For such other and further relief as the Court deems just and proper in the premises.

DATED: Honolulu, Hawaii, December 16, 1985.

/s/ JOSEPH T. KIEFER
BURNHAM E. GREELEY
JOSEPH T. KIEFER
JAMES A. KAWACHIKA

Special Counsel for Plaintiff
Charles R. Klenske, Trustee in
Reorganization for Manoa Finance
Company, Inc.

APPENDIX G

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF HAWAII

[Filed Jan. 18, 1984]
BK NO. 83-00065

ANSWER TO COMPLAINT

83-0222

In Re

MANOA FINANCE COMPANY, INC., a Hawaii corporation,

Debtor.

CHARLES R. KLENSKE, Trustee in Reorganization for MANOA FINANCE COMPANY, INC.,

Plaintiff,

vs.

HIROTOSHI YAMAMOTO, GEORGE W. H. GOO, ROBERT S. TERAMOTO, MASAYUKI TOKIOKA, SHIZUKO YAMAMOTO, SAKAE TAKAHASHI, ELIZABETH TAKAHASHI, MAKAHA LAUNDRY, INC., MAKAHA REEF, INC., TAKAHASHI-YAMAMOTO JOINT VENTURES, SSK INVESTMENT, INC. and ASIAN AMERICAN MEDICAL CLINIC OF SAN FRANCISCO,

Defendants.

ANSWER TO COMPLAINT

Comes now Defendant HIROTOSHI YAMAMOTO (hereinafter referred to as "Defendant"), by and through his attorneys, UKISHIMA & MATSUBARA, and in answer to the Complaint filed herein, alleges and avers as follows:

FIRST DEFENSE:

The Complaint fails to state a claim against Defendant upon which relief can be granted.

SECOND DEFENSE:

COUNT I

1. Defendant admits the allegations contained in Paragraphs 1 through 5, inclusive, 7, 8, 10, 11, 13, 14, 16, 17, 19, 20, 22, and 23, of the Complaint.

[MATERIAL DELETED IN PRINTING]

COUNT VIII

40. In answer to Paragraph 73 of the Complaint, Defendant incorporates by reference his answers to Paragraphs 1 through 72 of the Complaint.

41. Defendant admits the allegations contained in Paragraph 74 of the Complaint.

42. Defendant denies the allegations contained in Paragraph 78 of the Complaint.

43. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 76 of the Complaint, and therefore, denies the same.

44. In answer to Paragraphs 75 and 77, Defendant states that the promissory notes attached as Exhibits 11 through 21 of the Complaint speak for themselves.

45. In answer to Paragraph 79, Defendant admits that there is now due and owing a certain sum from Defendant to Manoa Investment Company. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said Paragraph, and therefore, denies the same.

46. Defendant denies each and every other allegation not herein specifically answered.

[MATERIAL DELETED IN PRINTING]

COUNT XVII

97. In answer to Paragraph 130 of the Complaint, Defendant incorporates by reference his answers to Paragraphs 1 through 129 of the Complaint.

98. Defendant admits the allegations contained in Paragraph 133 of the Complaint.

99. Defendant denies the allegations contained in Paragraphs 135 and 136 of the Complaint.

100. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 132 and 134 of the Complaint, and therefore, denies the same.

101. In answer to Paragraph 131, Defendant admits that on or about May 1, 1977, Japan Center Car Wash, Inc., executed and delivered to National Braemar, Inc., a promissory note in the principal sums of $131,499.83, and that said monies were loaned for certain improvements to be built on the Car Wash Property. Defendant denies the remaining allegations contained in said Paragraph.

102. Defendant denies each and every other allegations not herein specifically ansewered.

[MATERIAL DELETED IN PRINTING]

THIRD DEFENSE:

Defendant intends to rely upon the defense of failure to join an indispensable party or parties.

FOURTH DEFENSE:

Defendant intends to rely upon the defense of accord and satisfaction.

FIFTH DEFENSE:

Defendant intends to rely upon the defenses of waiver, estoppel, and laches.

SIXTH DEFENSE:

Defendant intends to rely upon the defense knowledge or acquiescence.

SEVENTH DEFENSE:

Defendant intends to rely upon the defense of consent.

EIGHTH DEFENSE:

Defendant intends to rely upon the defense of the availability of other adequate remedies.

NINTH DEFENSE:

Defendant intends to rely upon the defense that there has been no irreparable harm.

TENTH DEFENSE:

Defendant intends to rely upon the defense that the questions and issues which are the subject matter of this proceeding are premature.

ELEVENTH DEFENSE:

Defendant intends to rely upon the defense that his due process rights protected under the United States Constitution and the Constitution of the State of Hawaii, have been violated.

WHEREFORE, Defendant demands that the Complaint be dismissed and that he have judgment against Plaintiff and that he be awarded his costs, reasonable attorneys' fees, and such other further relief as this Court deems just and proper in the premises.

DATED: Honolulu, Hawaii, January 18, 1984.

OF COUNSEL:
UKISHIMA & MATSUBARA
A Law Corporation

DANIEL S. UKISHIMA
JAY T. SUEMORI
CRAIG G. H. YIM
Attorneys for Defendant
HIROTOSHI TAMAMOTO

APPENDIX H

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[Filed Feb. 20, 1986]
No. 84-2807

D.C. No. CV 83-0222
BK 83-00065

PETITION FOR REHEARING
SUGGESTED REHEARING EN BANC

Certificate of Service

Exhibits A, B addendum

In re:

MANOA FINANCE COMPANY, INC., a Hawaii Corporation,

Debtor.

CHARLES R. KLENSKE, Trustee in Reorganization,
Plaintiff-Appellee,

vs.

GEORGE W. H. GOO, ROBERT S. TERAMOTO, *et al.*
Defendants,

and

HIROTOSHI YAMAMOTO,
Defendant-Appellant.

PETITION FOR REHEARING

Introduction

This Petition on the Judgment of the Court filed February 4, 1986 and received by appellant on February 10, 1986 is to direct the Court's attention to:

1. Material facts in the record and of public knowledge which have been overlooked in the decision.

2. A material change in the State Laws governing Thrift Guaranty Corporation, a State sponsored insurance company which had defaulted in its guaranteed $10,000, insured payment to each depositor. This event occurred after case was submitted and which appears to have been overlooked by the panel.

1. Material Facts Over-looked

1. The indebtedness incurred (partial summary judgment of $1.6 million) was a transfer of funds from subsidiary, Manoa Investment company, (a *non-regulated* company) to Manoa Finance Company (a *regulated* company) in order to meet the latter's 10 to 1 debt to capital ratio. And not for Yamamoto's personal gain or benefit. This practice was legal and condoned for many years until the State outlawed it. There is therefore the issue of expost facto laws.

2. Even admitting this indebtedness, Manoa Finance Co. had an excess of $4,354,818.87 in assets over liabilities at the time of the filing for Chapter 11. Since Yamamoto is the sole owner (100%) his net equity in the company of $4 million can more than cover the alleged indebtedness of $1.6 million. Thus the partial summary judgment of $1.6 million is innocuous.

3. Material from *extra-judicial source.*

It is public knowledge that Judge King has high media visibility. He has made the front page cover of the Mid-Week Magazine; quoted by the media as crying when he saw on TV old Japanese women standing before the closed doors of Manoa Finance Co. . And even such trivia was reported in the gossip column that he had to change his glasses in order not to be mistaken for Henry Kissinger.

Such extra-judicial considerations, together with his assignment to himself of the adversary proceedings (with a different case number); his postulating in open

court for his appointed trustee, Klenske; — all of which could hardly *not* be construed as having the appearance: of partiality. More to have the appearance of an attempt to maintain an unblemished record of his administration of the highly publicised Manoa Finance Co. proceedings for nothing more than the sake of his public image.

2. State Legislated Reorganization Plan

1. The State legislated Reorganization Plan, after this case was submitted, is a brazen and illegal attempt to succor the State sponsored Thrift Guaranty Corporation from its failure to pay the insured $10,000.00 guaranteed to each depositor. (*See Exhibits A-1 to A-12*)

2. The Plan provided for a liquidation sale of all assets of Manoa Finance Company to Thrift Guaranty Corporation, with the anticipated surplus of assets over liabilities to be retained by Thrift Guaranty Co. for its other debts to the State of Hawaii, rather than having such excess reverting back to the equity holders, in accordance with bankruptcy procedures and the guarantees of the 14th Amendment to the United States constitution.

3. The Plan for liquidation permits Trustee Klenske to move from Chapter 11 to chapter 7 under the ruse of reorganization, when in fact, it was liquidation to a sole purchaser, Thrift Guaranty Corporation. And denying equity holders of any residual benefits which must be contemplated in any plan of reorganization. Thus the State had legislated interference with the proceedings in the bankruptcy court.

4. Furthermore, the Plan has offered Trustee Klenske a $308,000.00 inducement for its adoption under the guise of commissions. (*See Exhibit B*)

5. The Plan is therefore a clear violation of the Constitution and laws of the United States relating to bankruptcy, which broach of no intervention, interference, or even parallel jurisdiction by or with the states.

6. The issue of the Plan is germane to the case at hand because it will deny Yamamoto of the Manoa Finance Company Estate's success in the Partial Summary Judgment of $1.6 million; which according to bankruptcy rules will inure back to him as the prime beneficiary of the Estate of Manoa Finance Company.

7. Under duress from public pressures incited by Trustee Klenske and a representative of thrift Guaranty's interest in the Plan, Yamamoto dropped his efforts to forestall the execution of the Plan, reserving the right to sue the instigators of the Plan.

CITATIONS

1. In *Moses Taylor,* 71 U. S. (Wall.) 478 (1967), it was established that beginning with the First Judiciary Act enacted by Congress in 1789, in *certain instances* the jurisdiction of the Federal Courts shall be exclusive of the several states.

2. Clarification of the "certain instances" was made in *Dowd Box Company v. Courtney,* 368 U. S. 502 (1962), where Justice Stewart declared:

> This Court's approach to the question of whether Congress has ousted State Courts of jurisdiction was enunciated by Mr. Justice Bradley in *Claflin v. Houseman* (citation omitted) and has remained unmodified through the years. 'The general question, whether State courts can exercise concurrent jurisdiction with the Federal courts in case arising under the Constitution, laws, and treaties of the United States, has been elaborately discussed .... (and) the result of these discussions has in our judgment been ... to affirm the jurisdiction, where it is not excluded by express provision, or arising from the nature of the particular case."

Id. at 508.

3. Bankruptcy is one of the specific cases where Congress has made federal jurisdiction exclusive. Under 28 U. S. C. A. § 1334 (West Supp. 1984), it provides:

> The district courts shall have original jurisdiction, exclusive of the courts of the States, of *all matters* and proceedings in bankruptcy. (underscore supplied).

Also, under Article I, Sec. 8, cl. 4 of the United States Constitution, Congress was given the power "to establish uniform laws on the subject of Bankruptcies throughout the United States."

4. In compliance with the above mandate, Congress enacted the Bankruptcy Reform Act of 1978, as amended, Pub. L. No. 95-598 ("Bankruptcy Code") and the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-333.

5. In *Kalb v. Feuerstein,* 308 U. S. 433 (1940), protection is extended to the person and property of a debtor whom the bankruptcy law protects.

The Supreme Court stated:

> It is generally true that a judgment by a court of competent jurisdiction bears a presumption of regularity and is not thereafter subject to collateral attack. But, Congress, because its power over the subject of bankruptcy is plenary, may by specific bankruptcy legislation create an exception to that principle and render judicial acts taken with respect to the person or property of a debtor whom the bankruptcy law protects nullities and vulnerable collaterally. (footnote omitted.)

Id. at 438-39.

In absolute and unequivocal finality on the subject, the Court continued by stating that:

> The States cannot, in the exercise of control over local laws and practice, vest State courts with power to violate the supreme law of the land. The Constitution grants Congress exclusive power to regulate bankruptcy and under this power congress can limit the jurisdiction which courts, State or Federal, can exercise over the *person and property* of a debtor who duly invokes the bankruptcy law. (Underscore supplied.)

Id. at 419.

3. Rehearing En Banc Suggested

Because of the issue of judicial conduct lacking the appearance of impartiality, and the constitutional question of the State's legislated interference with the bankruptcy proceedings in the Federal courts, a hearing en banc is respectfully requested.

DATED: Honolulu, Hawaii, February 14, 1986

/s/ HIROTOSHI YAMAMOTO
HIROTOSHI YAMAMOTO, pro se
for petitioner

APPENDIX I

ADDITIONAL FEDERAL CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, section 8, clause 4 of the United States Constitution provides in relevant part that

> The Congress shall have Power . . . [t]o establish . . . uniform laws on the subject of Bankruptcies throughout the United States[.]

The Fifth Amendment to the United States Constitution provides in relevant part that

> private property [shall not] be taken for public use, without just compensation.

The Fourteenth Amendment to the United States Constitution provides in relevant part that

> No state shall . . . deprive any person of life, liberty, or property, without due process of law.

Section 1123(a)(5)(D) of Title 11, United States code, provides in relevant part that

> Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall . . . provide adequate means for the plan's implementation, such as . . . sale of all or any part of the property of the estate, either subject to or free of any lien . . . .

Section 1129 of Title 11, United States Code, provides in relevant part that

> (a) The court shall confirm a plan only if all of the following requirements are met:
>
> . . .
>
> (8) With respect to each class of claims or interests — (A) such class has accepted the plan;

or — (B) such class is not impaired under the plan.

. . .

(11) Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

. . .

(b)(1) . . . the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of [paragraph (a)(8)] if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

(2) For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

. . .

(b) With respect to a class of unsecured claims—

(i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property.

(C) With respect to a class of interests—

(i) the plan provides that each holder of an

interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or

(ii) the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property.

APPENDIX J

STATUTORY AUTHORITY OF THE BANK EXAMINER OF HAWAII (NOW COMMISSIONER OF FINANCIAL INSTITUTIONS) AND THE HAWAII INDUSTRIAL LOAN AND INVESTMENT ACT OF 1937, AS AMENDED

Chapter 401, Hawaii Rev. Stat. (1985), with accompanying legislative history, provides in relevant part as follows:

§401-1 Division of financial institutions, commissioner of financial institutions, (a) The director of commerce and consumer affairs with the approval of the governor, shall appoint a fit and competent person to perform the duties of the commissioner of financial institutions, whose principal duty will be to examine financial institutions and who shall also be known as the "examiner of financial institutions."

* * *

[L 1913, c 78, §1; RL 1925, §1265; am L 1925, c 86, §1; RL 1935, §2220; am L 1939, c 49, §1; am L 1941, c 25, §1; RL 1945, §5821; am L 1951, c 264, §2; RL 1955, §133-1; am L Sp 1959 2d, c 1, §13; am L 1963, c 114, §3; HRS §401-1; am L 1982, c 203, §2 and c 204, §8; am L 1983, c 124, §17; am L 1985, c 269, §2]

* * *

§401-3 Inspection; examination; duties. Every bank, trust company, building and loan association, fiduciary company, industrial loan and investment company, or licensee under chapter 409 doing business in the State, excepting the national banks, shall be subject to the inspection of the commissioner.

* * *

[L 1913, c 78, §3; RL 1925, §1267; am L 1931, c 148, §1; RL 1935, §2222; am L 1937, c 230, §1; RL 1945, §3823; RL 1955, §135-3; HRS §401-3; am L 1979, c 48, §2; am imp L 1984, c 90, §1; am L 1985, c 269, §50]

* * *

§401-5 Illegal or unsafe practices; order directing discontinuance. When it appears to the commissioner from any examination or report that any bank, trust company, building and loan association, fiduciary company, industrial loan and investment company, or licensee under chapter 409 has committed any violation of the law, or is conducting its or the licensee's business in an unsafe or unauthorized manner, the commissioner shall, by an order in writing, direct the discontinuance of the illegal or unsafe or unauthorized practices and enforce strict conformity to the requirements of the law.

If any bank, trust company, building and loan association, fiduciary company, industrial loan and investment company, or licensee under chapter 409 fails to comply with the order within the time therein specified, then the commissioner may exercise such supervision, control, and management over such bank, company, association, or licensee, and its officers and its or the licensee's affairs and business as the commissioner may deem necessary for the public welfare; and further, if deemed necessary by the commissioner, the commissioner may invoke the powers granted the commissioner in section 401-12, providing for the appointment of a receiver, the provisions of which are extended and made applicable thereto.

Any failure or refusal to comply with an order of the commissioner to cease violating a statutory provision or lawful order in writing directing the discontinuance of illegal or unsafe or unauthorized practices, shall be deemed a violation of this chapter and punishable as provided in

section 401-20. [L 1931, c 148, §2; RL 1935, §2224; am L 1937, c 230, §2; RL 1945, §5825; am L 1951, c 99, §1; RL 1955, §135-5; HRS §401-5; am imp L 1984, c 90, §1; am L 1985, c 269, §50]

* * *

§401-12 Receiver, application for, appointment; duties. If the commissioner becomes satisfied that the capital of any corporation subject to the inspection of the commissioner has become impaired or reduced below the amount required by law, and the impairment or reduction is not made good as by the commissioner required, or if the commissioner becomes satisfied that the corporation or any person, firm, association, or copartnership subject to the inspection of the commissioner is conducting its or the person's business in an unsafe or unauthorized manner, so that the continuance of its or the person's business would be hazardous to the public, or those having funds in its control, or if the corporation, person, firm, association, or copartnership has violated this chapter or any other law relating thereto, or if the corporation, person, firm, association, or copartnership refuses to submit its or the person's books and papers and concerns to the inspection of the commissioner, or the commissioner's deputy, or if any officer of the corporation, person, firm, association, or copartnership unreasonably delays or refuses to be examined under oath, touching the affairs and condition of the corporation, person, firm, association, or copartnership, or if from any examination made, or report in this chapter provided for, the commissioner concludes that the corporation, person, firm, association, or copartnership is in an unsound or unsafe condition to transact its or the person's business so that it is unsafe and inexpedient to continue the same, the commissioner shall communicate these facts to the governor, and with the governor's concurrence, application may be made by the attorney general, on behalf

of the commissioner, to a judge or court of competent jurisdiction for the appointment of a receiver.

* * *

[L 1915, c 127, §1; RL 1925, §1275; RL 1935, §2231; am L 1937, c 230, §6; RL 1945, §5832; RL 1955, §135-14; HRS §401-12; am imp L 1984, c 90, §1; am L 1985, c 269, §5]

Chapter 408, Hawaii Rev. Stat. (1985), with accompanying legislative history, provides in relevant part as follows:

§408-1 Application of chapter. This chapter may be cited as the Industrial Loan Companies Act and shall be applicable to every person who engages in or attempts to engage in the business of an industrial loan company. [L 1937, c 231, pt of §1; am L 1939, c 75, pt of §1 (6782); RL 1945, §8802; RL 1935, §194-1; HRS §408-1; am L 1984, c 253, §1]

§408-2 Definitions. As used in this chapter and unless a different meaning appears from the context:

* * *

"Commissioner" means the commissioner of financial institutions of the State.

"Company" means any person to which this chapter or any portion of this chapter is applicable. The term "company" includes any foreign corporation doing business in the State.

"Consumer loan" means a loan made to a natural person primarily for a personal, family, or household purpose:

(1) In which the principal amount does not exceed $25,000 or in which there is an express written com-

mitment to extend credit in a principal amount not exceeding $25,000; or

(2) Such loan is secured by real property, or by personal property used or expected to be used as the borrower's principal dwelling.

"Contract" means credit agreements, loan agreements, promissory notes, and other documents constituting the contract for credit.

"Engage in the business of an industrial loan company" or "carry on the business of an industrial loan company" or "the industrial loan business" or any other term of similar import, means the loaning of money and charging, contracting for, or receiving interest, fees, compensation, or charges of whatever nature or kind for the use of money where the interest charged, contracted for, or received is in excess of the interest permitted by law other than this chapter; provided that direct financing to customers by mercantile firms or by persons engaged in the mercantile business shall not be deemed engaging in business as an industrial loan company.

"Industrial loan company" means any person who engages in the industrial loan business as defined in this chapter; provided that this definition shall not be construed to include banks, trust companies, savings and loan associations, credit unions, mortgage companies, pawnbrokers, or licensees under chapter 409. As used in this chapter the term "savings and loan association" includes "building and loan association."

"Interest" includes interest, discount, points, loan fees, and loan origination charges, if charged, contracted for, or received for the use of money, but excludes other charges, including the charges permitted by section 408-15(e) and (j).

* * *

"Person" means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or governmental unit.

* * *

[L 1937, c 231, pt of §1; am L 1939, c 75, pt of §1 (pt of 6782A); RL 1945, §8803; RL 1955, §194-2; am L Sp 1959 2d, c 1, §15; am L 1963, c 114; §3; HRS §408-2; am L 1976, c 103, §2; am L 1980, c 114, §1; am L 1982, c 203, §8; L 1984, c 253, §3; am L 1985, c 269, §30]

* * *

§408-13 Capital stock, (a) The capital stock of any corporation, desiring to engage in the industrial loan business and to issue investment or thrift certificates or debentures to the public, shall be not less than $300,000, which capital stock shall be fully paid to the corporation in cash. No commission, fees, brokerage, or other compensation of any kind shall be paid, either directly or indirectly, to any person, firm, or corporation for the sale of any stock of such corporation, except out of assets in excess of the minimum capital of $300,000 required by this chapter. The amount of the capital stock shall not, at any time thereafter, be voluntarily reduced below the amount originally paid in, except as may be permitted and in the manner provided by the general corporation laws; provided that the amount of the capital stock shall at all times be at least $300,000. This provision also applies to an industrial loan company that opens an additional office or place of business after July 31, 1977.

(b) The capital stock of any corporation which desires to engage in the industrial loan business but not to issue investment or thrift certificates to the public shall be not less than $100,000, which capital stock shall be fully paid to the corporation in cash. The amount of the capital stock

of such corporation shall at all times be not less than $100,000. §L 1937, c 231, pt of §1; am L 1939, c 75, pt of §1(6782J); RL 1945, §8813; RL 1955, §194-13; HRS §408-13; am L 1971, c 52, §2 am L 1977, c 28, §1 am L 1983, c 167, §17]

§408-14 Specific powers. (a) Every industrial loan company, in addition to the powers exercisable by or conferred upon it under or by the general corporation law of the State, or by any other provision of this chapter, shall possess and may exercise the following powers:

(1) To borrow money upon its own secured or unsecured notes;

(2) To lend money upon individual credit or upon the security of comakers, personal endorsement, or the pledge or mortgage of real or personal property or chooses in action, or upon any combination of such credit and security, and to contract for such interest, discount, or other consideration as is permitted by this chapter, and to sell or broker, loans or contracts, in whole or in part, to other lenders, and charge or retain a fee for the originating, selling, brokering, or servicing of such loans or contracts;

(3) To discount, purchase, or otherwise acquire notes, installment contracts, warehouse receipts, or other chooses in action,

(4) To establish branches within the State with the prior written approval of the commissioner,

(5) To finance purchases for others by taking title to merchandise temporarily and only for the purpose of securing loans entered into for the purchases;

(6) To issue and sell certificates for the payment of money at any time, either fixed or uncertain, including without limitation evidences of thrift accounts as defined in and subject to chapter 408A, and to receive

amounts invested therein in installments or otherwise, with or without allowance of interest on the investments; provided no company may issue the certificates or receive those amounts unless the company is a corporation organized and operating in good standing under the laws of this State. A company may, but need not, require an investor to subscribe to a certain amount of investment in such certificates, subject to minimum or maximum investments required by law or rules. Nothing herein shall be construed to authorize any industrial loan company to receive deposits or to create any liability due on demand; and

(7) To become the legal or beneficial owner of tangible personal property and other tangible property for the purpose of leasing such property, to obtain an assignment of a lessor's interest in a lease of such property, and to incur obligations incidental to its position as the legal or beneficial owner and lessor of the leased property.

(b) The certificates in subsection (a), including the evidence of the thrift accounts, shall not be issued by any industrial loan company without receiving the prior written approval of the commissioner, and shall bear upon the face of the instrument the words, "THIS IS NOT A CERTIFICATE OF DEPOSIT."

(c) No industrial loan company shall have outstanding at any time its certificates, debentures, or both registered under chapter 485 in an aggregate sum in excess of ten times the aggregate amount of its paid-up capital and surplus; provided the commissioner may limit the ratio of certificates, debentures, or both to capital and surplus which may be issued by any industrial loan company if the commissioner determines that the lower ratio is necessary in the public interest. In determining the ratio to be permitted, the commissioner shall consider all relevant cir-

cumstances, including, without limitation, the following factors:

(1) The length of time the company has been in operation;

(2) Ratio of losses to volume of loans made and contracts purchased;

(3) The creation and maintenance of adequate reserve for losses;

(4) Charge-off of uncollectable accounts;

(5) The amount of growth of undivided profits, earned surplus, or both;

(6) Diversification of character and source of loans made and contracts purchased;

(7) Creation and maintenance of adequate internal controls; and

(8) Sound and efficient management.

(d) Every industrial loan company shall maintain and have on hand at all times a reserve composed of cash and other securities in an amount equal to the sum of seven per cent of its liabilities on outstanding certificates and debentures with an original term not exceeding one year and five per cent of its liabilities on outstanding certificates and debentures with an original term of one year or more. The reserve shall not be pledged.

This reserve shall be determined as of a particular date and shall be based upon the daily average of all outstanding certificates and debentures of the immediate preceding seven calendar days. During a succeeding seven calendar day period, the average daily balance of the reserve shall equal or exceed the reserve amount. At the end of the seven calendar day period, a new reserve amount shall be determined based upon the daily average of the immediate preceding seven calendar days and for the next succeeding

seven calendar day period, the average daily balance of the reserve shall equal or exceed such new amount. Determination of reserve requirements shall be made on forms approved by the commissioner and shall be computed within two working days after the date of determination.

(e) Upon any failure to maintain the ratio required in subsection (c) or the reserve required in subsection (d), the industrial loan company shall:

(1) Promptly take action to correct the deficiencies;

(2) Cease making any loans or other advances or extensions of credit until the deficiencies are corrected; and

(3) Notify the commissioner immediately, in case of any deficiency in the ratio requirement, and within two working days in case of any deficiency in the reserve requirement.

The commissioner, in writing, may direct specific directors and officers of any industrial loan company in violation of this section to take actions reasonably necessary to comply with this section.

(f) Cash reserves shall be limited to cash in banks and on hand, bank or savings and loan certificates of deposit, direct United States, State, or county government securities, and passbook deposits in banks or savings and loans. The cash reserve shall at all times equal not less than fifty per cent of the reserve that is required by this section.

(g) Other securities shall be limited to direct obligations of the United States government, State, or county, bankers acceptances approved by the commissioner, irrevocable lines of credit in a form acceptable to the commissioner, and securities listed on the New York stock exchange or the American stock exchange. Not more than twenty-five per cent of the total reserve of cash and other security shall be held in securities listed on the New York stock

exchange or the American stock exchange. [L 1937, c 231, pt of §1; am L 1939, c 75, pt of §1(6782K); RL 1945, §8814; am L 1953, c 80, §2; RL 1955, §194-14; HRS §408-14; am L 1969, c 97, §1 and c 120, §3; am L 1972, c 113, §1; am L 1976, c 103, §3 and c 186, §1; am L 1979, c 71, §2; am L 1982, c 147, §22; am L 1983, c 253, §1 and c 167, §8; am L 1984, c 234, §6; am L 1985, c 269, §50]

APPENDIX K

THE HAWAII INDUSTRIAL LOAN COMPANY GUARANTY ACT OF 1977, AND THE 1983 AMENDMENTS THERETO

Chapter 408A, Hawaii Rev. Stat. (Supp. 1977), the original codification of the Hawaii Industrial Loan Company Guaranty Act of 1977 ("HILCGA"), provides in relevant part:

§408A-1 Title. This chapter shall be known as the Industrial Loan Company Guaranty Act.

§408A-2 Purpose and policy. (a) The purpose of this chapter is to assist in stabilizing the industrial loan industry by providing for a guarantee payment of the obligations of members up to $10,000 for each thrift account, subject to the express limitations of this chapter.

(b) Because of the increased use of industrial loan companies by the people within this State, it is hereby declared to be in the best interest of the public and the policy of the State to provide for the guarantee of thrift accounts in these institutions.

§408A-3 Definitions. As used in this chapter unless the context otherwise requires:

(a) "Bank examiner" means the bank examiner as provided in section 401-1.

(b) "Guaranty corporation" means the Thrift Guaranty Corporation of Hawaii.

(c) "Member" means an industrial loan company licensed and regulated by chapter 408 which:

(1) On [April 1, 1977,] has outstanding thrift account obligations and is not the subject of any bankruptcy, insolvency, reorganization or receivership proceedings in either Federal or State courts; or

(2) After [April 1, 1977,] becomes a member in accordance with section 408A-30.

(d) "Applicant" means an industrial loan company which subsequent to [April 1, 1977,] obtains the written approval of the bank examiner to issue thrift account obligations.

(e) "Thrift account" includes the principal invested in investment or thrift certificates (including thrift passbooks) or debentures, whether on installment bases or fully paid and however evidenced, plus unpaid interest accrued thereon; provided that "thrift account" shall not include single transactions in which the investor invests an amount of $250,000 or more and the instrument evidencing such transaction states on its face that it is not protected by the Thrift Guaranty Corporation of Hawaii.

(f) "Independent activity" means activity other than that directed solely at increasing guarantee coverage under section 408A-9.

(g) "Board" means the board of directors of the Thrift Guaranty Corporation of Hawaii.

§408A-4 Establishment of guaranty corporation. (a) Within sixty days after [April 1, 1977,] all industrial loan companies operating on [April 1, 1977,] which have issued and have outstanding thrift account obligations shall establish a nonprofit corporation pursuant to chapter 416, to operate under the name "THRIFT GUARANTY CORPORATION OF HAWAII". Initial administrative and organizational expenses shall be borne equally by the organizing companies. The initial bylaws and any subsequent amendments thereto shall be subject to the prior written approval of the bank examiner.

(b) Upon the establishment of the guaranty corporation, no industrial loan company licensed under and regulated by chapter 408, shall issue thrift account obligations, unless it is a member of the guaranty corporation.

§408A-6 Board of directors; powers. (a) the board of directors of the guaranty corporation shall consist of seven members and shall have responsibility and control over the organization, management, policies and activities of the guaranty corporation. Four votes shall be required for any action taken by the board. The board may, subject to the prior written approval of the bank examiner:

(1) Investigate and inquire into the financial condition and management of any of its members, and have access to examine at reasonable hours, the offices, books, accounts, papers, records, files, safes and vaults thereof.

(2) Impose such reasonable restrictions and conditions on the activities and operations of its members as it finds necessary to protect the interests of the members' thrift account holders or to prevent thrift account holder loss.

(3) Make recommendations to the bank examiner as to actions reasonably necessary to protect the interests of members' thrift account holders.

(4) Invest amounts held in the guaranty fund in accordance with the requirements set forth in section 408-14 with respect to the investment of the cash or security reserve.

(5) Borrow funds from the State or any other lender when necessary to effectuate the provisions of this chapter.

§408A-7 Guaranty corporation, power to act as receiver. (a) Whenever the bank examiner makes application pursuant to section 401-12 or 402-5 for the appointment of a receiver of any member, he may request that he court appoint the guaranty corporation as receiver.

(b) In the event that the guaranty corporation is appointed receiver it shall have all of the powers of receivers as set forth in chapters 401 and 402.

§408A-8 Miscellaneous powers of guaranty corporation. (a) In order to reopen a closed member or, when the guaranty corporation has determined that a member is in danger of closing, in order to prevent such closing, the guaranty corporation, with the approval of the bank examiner, is authorized to make loans to, or purchase the assets of, or invest in, such member, upon such terms and conditions as the board with the approval of the bank examiner may prescribe.

(b) Receivers or liquidators of members shall be entitled to offer the assets of such members for sale to the guaranty corporation or as security for loans from the guaranty corporation. The proceeds of every such sale or loan shall be utilized for the same purposes and in the same manner as other funds realized from the liquidation of the assets of such members. The guaranty corporation with the approval of the bank examiner may make loans on the security of or may purchase and liquidate or sell any part of the assets of a member which may hereafter be placed in receivership or adjudicated bankrupt, but in any case in which the guaranty corporation is acting as receiver of a member, no such loan or purchase shall be made without the approval of a court of competent jurisdiction.

* * *

§408A-9 Guarantee of thrift accounts. Thrift accounts plus unpaid interest thereon accrued as of the last interest accrual date prior to the date of receivership of the property and business of a member or the date such member is declared bankrupt, whichever first occurs shall be guaranteed by the guaranty corporation as follows:

(1) For single ownership thrift accounts in any one institution:

(A) Funds owned by an individual and invested in the manner set forth in this paragraph [(1)] shall be

added together and guaranteed up to $10,000 in the aggregate.

(B) Individual accounts invested in one or more accounts in his own name shall be guaranteed up to $10,000 in the aggregate.

(C) Funds owned by a principal and invested in one or more accounts in the name or names of agents or nominees shall be added to any individual account of the principal and guaranteed up to $10,000 in the aggregate.

(D) Accounts held by a guardian, custodian, or conservator for the benefit of his ward or for the benefit of a minor under the "Hawaii Uniform Gifts to Minors Act" and invested in one or more accounts in the name of the guardian, custodian, or conservator shall be added to any individual account of the ward or minor and guaranteed up to $10,000 in the aggregate.

(2) For testamentary accounts in any one institution:

(A) Funds owned by an individual and invested in a revocable trust account, or tentative trust account, payable-on-death account, or similar account evidencing an intention that on his death the funds shall belong to his spouse, child, or grandchild shall be guaranteed up to $10,000 in the aggregate as to each such named beneficiary, separately from any other account of the owner.

(B) If the named beneficiary of such an account is other than the owner's spouse, child, or grandchild, the funds in such account shall be added to any individual account of such owner and guaranteed up to $10,000 in the aggregate.

(3) For accounts in any one institution held by [personal representatives], being funds of a decedent held in

the name of the decedent or in the name of the [personal representative] of his estate and invested in one or more accounts shall be guaranteed up to $10,000 in the aggregate, separately from the individual accounts of the beneficiaries of the estate or of the [personal representative].

(4) For corporation or partnership accounts in any one institution, being accounts of a corporation or partnership engaged in any independent activity, up to $10,000 in the aggregate. An account of a corporation or partnership not engaged in an independent activity shall be deemed to be owned by the person owning such corporation or comprising such partnership and, for guarantee purposes, the interest of each person in such account shall be added to any other account individually owned by such person and guaranteed up to $10,000 in the aggregate.

(5) for unincorporated association accounts in any one institution, being accounts of an unincorporated association engaged in any independent activity up to $10,000 in the aggregate. An account of an unincorporated association not engaged in any independent activity shall be deemed to be owned by the persons comprising such association and, for guarantee purposes, the interest of each owner in such account shall be added to any other account individually owned by such person and guaranteed up to $10,000 in the aggregate.

(6) For joint accounts in any one institution:

(A) Accounts owned jointly, whether as joint tenants with right of survivorship, as tenants by the entirety, or as tenants in common, shall be guaranteed separately from account individually owned by the co-owners.

(B) A joint account shall be deemed to exist, for purposes of guarantee of accounts, only if each co-

owner has personally executed an account signature card and possesses redemption rights.

(C) An account owned jointly which does not qualify as a joint account for purposes of guarantee of accounts shall be treated as owned by the named persons as individuals, and the actual ownership interest of each such person in such account shall be added to any other account individually owned by such person and guaranteed up to $10,000 in the aggregate.

(D) All joint accounts owned by the same combination of individuals shall first be added together and guaranteed up to $10,000 in the aggregate.

(E) The interest of each co-owner in all joint accounts owned by different combinations of individuals shall then be added together and guaranteed up to $10,000 in their aggregate.

(7) For trust accounts in any one institution being all trust interests for the same beneficiary invested in accounts established pursuant to valid trust arrangements created by the same settler (grantor) shall be added together and guaranteed up to $10,000 in the aggregate, separately from other accounts of the trustee of such trust funds or the settlor or beneficiary of such trust arrangements.

§408A-10 Guarantee fund: establishment, maintenance, assessment. The guaranty corporation shall establish and maintain a guaranty fund as follows:

(1) The guaranty corporation shall within ten days after the issuance of its charter levy on each of its members an initial assessment equal to one-quarter of one per cent of each member's outstanding thrift account obligations as shown on the most recent reports required by section 408-21. One year after the initial assessment, the guaranty corporation shall levy

on each of its members an assessment of three-eights of one per cent of each member's outstanding thrift account obligations. Two years after the initial assessment the guaranty corporation shall levy an assessment of one-half of one per cent of each member's outstanding thrift account obligations and a similar assessment shall be levied annually thereafter until the fund equals or exceeds two per cent of the total thrift account obligations of all members of the guaranty corporation. In the event that upon receivership of any member the amount of total funds available in the guaranty fund are insufficient to pay $10,000 of each thrift account obligation as specified in section 408A-9, the bank examiner may make demand upon the guaranty corporation for an advance payment, as may be required to meet the deficiency, of annual assessments to become due, not to exceed two times the annual assessment. Any amount prepaid by a member as a result of such demand by the bank examiner shall be credited to the next annual assessment or assessments and each member shall at the time of the next annual assessment pay the balance otherwise due, if any, or shall be refunded any amount overpaid as a result of the advance assessment. At no time shall any member be required to be prepaid in excess of three years.

(2) Whenever the total amount in the fund exceeds two per cent of the total of all members' thrift account obligations as shown on the most recent reports required by section 408-21, the guaranty corporation shall not levy the annual assessment; provided that any member, which at such time has not paid assessments totaling at least two per cent of its outstanding thrift account obligations, shall continue to pay assessments in accordance with the schedule established by paragraph (1) of this section until it has

paid two per cent of its outstanding thrift account obligations.

(3) The guaranty corporation may assess members at any time during any calendar year in which the fund has been reduced by a demand of the bank examiner if the aggregate assessments during the year do not exceed the amount provided in paragraph (1) above.

Note. For general obligation bond authorization to provide loans to guaranty corporation, see L 1977, c 2, §4.

§408A-11 Notice of assessment; payment. the guaranty corporation shall send a written notice of assessment to each member assessed within five days after the levy of any assessment. Amounts assessed shall be paid to the guaranty corporation by each member assessed not later than sixty days following written notice of assessment.

* * *

§408A-14 Payments for members in receivership. (a) When a member has been adjudicated bankrupt or has been or is in receivership, the bank examiner shall either:

(1) Direct the guaranty corporation to forthwith pay to each thrift account holder of the member up to $10,000 as specified in section 408A-9; or

(2) withhold any direction to the guaranty corporation until it has been determined that the proceeds of the receivership are insufficient to pay up to $10,000 of each thrift account obligation as specified in section 408A-9; upon such determination the bank examiner shall direct the guaranty corporation to pay each such deficiency.

(b) The guaranty corporation shall comply with any demand for payment made by the bank examiner pursuant to section 408A-14(a) within ninety days from the date of the demand. If the total funds available from the guaranty

corporation at the time demand for payment is made are insufficient to pay in full the amounts provided by section 408A-9, the amount paid to each thrift account holder shall be ratably reduced in proportion to the amount by which the fund is deficient, and thereafter further payments shall be made ratably to each thrift account holder in accordance with the directions of the bank examiner as additional funds are paid into the guaranty fund. When thrift account obligations are paid, each member's account shall be reduced ratably based on its account balance prior to the payment.

(c) Whenever the guaranty corporation makes payments in accordance with section 408A-14(a), it shall be subrogated to all rights of the thrift account holder up to the amount of its payment, and shall be entitled to repayment in full from the estate of the member prior to any distribution to the thrift account holder to whom it has made payment.

§408A-15 Bank examiner's authority to take possession of guaranty corporation, grounds. Whenever it appears to the bank examiner that the guaranty corporation has violated its articles of incorporation or any law of this State, has not paid amounts as directed by the bank examiner pursuant to section 408A-14, has invested its funds in violation of section 408A-6, has not levied assessments as required by sections 408A-10 and 408A-11, has not taken action to enforce payment as required by section 408A-13, has violated any section of this chapter, or has neglected or refused to submit its books, papers, and affairs for the inspection of the bank examiner, the bank examiner may order the guaranty corporation to cease and desist from committing any such violations and, failing compliance with such order, may forthwith take possession of the property and business of the guaranty corporation and retain possession until the guaranty corporation satisfies the bank examiner that it will operate in conformity with this chapter. During the time the bank examiner has such

possession, he shall perform the duties and carry out the obligations of the guaranty corporation.

§408A-16 Action to enjoin taking: hearing, order. Whenever the bank examiner has taken possession of the property and business of the guaranty corporation, the guaranty corporation, if it deems itself aggrieved thereby, may apply to the circuit court of the first circuit to enjoin further proceedings. The court, after citing the bank examiner to show cause why further proceedings should not be enjoined, and after a hearing and a determination of the facts upon the merits, may dismiss such application, enjoin the bank examiner from further proceedings and direct him to surrender the property and business to the guaranty corporation, or make such further order as may be just.

* * *

In 1983, the Hawaii Legislature amended HILCGA such that, *inter alia,* Hawaii Rev. Stat. § 408A-4 (Supp. 1983), provided:

> §408A-4 Establishment of guaranty corporation. (a) Within sixty days after [April 1, 1977,] all industrial loan companies operating on [April 1, 1977,] which have issued and have outstanding thrift account obligations shall establish a nonprofit corporation pursuant to chapter 416, to operate under the name "THRIFT GUARANTY CORPORATION OF HAWAII". Initial administrative and organizational expenses shall be borne equally by the organizing companies. The initial bylaws and any subsequent amendments thereto shall be subject to the prior written approval of the bank examiner.
>
> (b) No industrial loan company licensed under and regulated by chapter 408, shall issue thrift account obligations, unless it is a member of the

guaranty corporation. All such thrift account obligations shall be insured either by the guaranty corporation or by the Federal Deposit Insurance Corporation; provided that after June 30, 1984, no industrial loan company shall issue thrift account obligations, unless such obligations are insured by the Federal Deposit Insurance Corporation.

(3)

Supreme Court, U.S.
FILED
JAN 2 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-558

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

In re: MANOA FINANCE COMPANY, INC.,
Debtor,

CHARLES R. KLENSKE, Trustee in reorganization,
Respondent,

vs.

GEORGE W.H. GOO; ROBERT S. TERAMOTO, *et al.*,

and

HIROTOSHI YAMAMOTO,
Petitioner.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENT CHARLES R. KLENSKE, Trustee in reorganization

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January 2, 1987

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25pp

QUESTION PRESENTED FOR REVIEW

Whether petitioner is barred from challenging in this case the constitutionality of Act 187 of the Session Laws of Hawaii (1985 Regular Session).

PARTIES, NOMENCLATURE, AND ABBREVIATIONS

The parties to this matter are identified in the case caption. Messrs. Goo and Teramoto are not involved in the petition for a writ of certiorari.

This brief in opposition is filed on behalf of Charles R. Klenske, the duly appointed trustee in the underlying bankruptcy proceeding.

Throughout this brief, trustee Klenske will be referred to as "respondent." Act 187 of the Session Laws of Hawaii (1985 Regular Session) will be referred to as "Act 187." The debtor corporation, Manoa Finance Company, Inc., will be referred to as "MFC." Thrift Guaranty Corporation of Hawaii will be referred to as "TGC."

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTION 2

STATEMENT OF THE CASE 2

SUMMARY OF ARGUMENT 4

ARGUMENT 5

CONCLUSION 8

APPENDICES

A. Notice of Appeal filed December 11, 1984 (Ninth Circuit Docket No. 84-2807) 1a

B. Ninth Circuit Docket No. 84-2807 ..... 3a

C. Ninth Circuit Docket No. 85-2692 ..... 7a

D. Memorandum In Support of Petitioner's Objections To Trustee's Plan of Reorganization (Sept. 1983) (cover page and pp. 7-8) 9a

TABLE OF AUTHORITIES

Statutes: Page

11 U.S.C. §323 6

11 U.S.C. §541 6

28 U.S.C. §1254(1) 2

28 U.S.C. §2101(c) 2

Hawaii Rev. Stat. §408A-4 2

1985 Hawaii Sess. Laws Act 187 ..... i, ii, 2, 4, 5, 6, 7

Rules of Court:

Sup. Ct. Rule 17 7

Fed. R. App. P. 28(j) 7

Fed. R. App. P. 42 4

Bankruptcy Rule 6009 6

Miscellaneous:

4 *Collier on Bankruptcy* ¶541.10[5] (15th ed. 1986) 6

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CHARLES R. KLENSKE, Trustee in reorganization,
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GEORGE W.H. GOO; ROBERT S. TERAMOTO, *et al.*,

and

HIROTOSHI YAMAMOTO,
Petitioner.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENT CHARLES R. KLENSKE, Trustee in reorganization

---

OPINIONS BELOW

This case was decided by the Ninth Circuit in February 1986. The opinion is reported at 781 F.2d 1370. Petitioner seeks review of only the subsequent unreported order deny-

ing his petition for rehearing and suggestion for rehearing *en banc*. That order was entered on June 24, 1986 (Pet. App. C).

JURISDICTION

The Court has jurisdiction under 28 U.S.C. §1254(1). The petition was filed within the time required by 28 U.S.C. §2101(c).

The Ninth Circuit order denying the petition for rehearing was entered June 24, 1986 (Pet. App. C). The petition for a writ of certiorari was docketed in this Court on September 22, 1986.

STATEMENT OF THE CASE

Petitioner is the sole stockholder of Manoa Enterprises, Inc. which in turn owns all of the stock of MFC. In February 1983, MFC filed a voluntary petition for reorganization in the United States Bankruptcy Court for the District of Hawaii. Four months later, respondent was appointed trustee.

Act 187 was enacted effective June 3, 1985. In essence, it authorized the State of Hawaii to loan money to TGC[1] for the purpose of permitting prompt payment to depositors of MFC and of two other Hawaii financial institutions likewise involved in bankruptcy cases (Pet. App. H-1). Any loan so made would be "pursuant to a plan of reorganization or liquidation that has been confirmed by the court in the bankruptcy proceedings . . . ." (Pet. App. H-5), and any loan so made would be secured by the assets

[1]TGC is a non-profit corporation established as required under Hawaii Revised Statutes § 408A-4 by the industrial loan companies operating in Hawaii.

of TGC, including assets acquired from MFC (Pet. App. H-7).

Respondent's plan of reorganization was filed with the court in September 1985. The plan provided that MFC depositors would be paid the full amount of their claims; that MFC equity holders were not entitled to any distributions; and that any residual assets would be returned to TGC.[2]

Petitioner, then represented by counsel, objected to the plan. The primary target for objection was the provision concerning residual assets.[3] The objections were heard by the court, and, after hearing, respondent's plan of reorganization was confirmed by order entered October 2, 1985.

Petitioner, now proceeding *pro se,* noted an appeal from the order of confirmation of the reorganization plan. The notice of appeal invoked the fourteenth amendment against the treatment of MFC equity holders and against the return of assets to TGC (State of Hawaii App. B). The appeal was docketed in the Ninth Circuit in October 1985 as No. 85-2692. Two months later petitioner stipulated to dismissal of the appeal (State of Hawaii App. C). The Ninth Circuit order of entry of dismissal based on that sti-

---

[2]Under the plan of reorganization, TGC waived its claim as assignee of depositor claims under the Advance Payment Program pursuant to which TGC advanced payments totaling approximately $12.6 million to MFC depositors.

[3]"Especially unfair under the reorganization plan is the provision that even after the payment of all claims, any surplus remaining out of the $27.5 million paid to Manoa Finance Company by Thrift Guaranty Company will be returned to Thrift Guaranty Company. . . . If any surplus remains after all the claims have been paid, it should go to the stockholders and not Thrift Guaranty Company. . . ." (Resp. Exh. D at 7-8).

pulation and Fed. R. App. P. 42 was filed December 17, 1985 (State of Hawaii App. D). The Ninth Circuit order summarily affirming confirmation of the plan of the reorganization was filed December 30, 1985 (State of Hawaii App. E).[4]

The present petition for a writ of certiorari does not arise from the appeal to the Ninth Circuit of the plan of reorganization. It arises from a related but distinct Ninth Circuit case. Specifically, it arises from an adversary proceeding against petitioner resulting from his personal indebtedness on promissory notes executed by him in favor of MFC. Petitioner, then represented by counsel, opposed the motion for partial summary judgment. The district court granted the motion after hearing.

Petitioner appealed *pro se*. The notice of appeal is Appendix A to this brief. The Ninth Circuit opinion reported at 781 F.2d 1370 disposed of all issues raised by petitioner on appeal. Petitioner then filed a combined petition for rehearing and suggestion for rehearing *en banc*, accusing the district court of partiality and asserting the unconstitutionality of the plan of reorganization (State of Hawaii App. B). The Ninth Circuit denied rehearing without requesting an answer from respondent.

SUMMARY OF ARGUMENT

The petition for a writ of certiorari should be denied because the issues for which certiorari is sought — relating to Act 187 — are not properly before the Court. They are not part of this proceeding and, in fact, were affirmatively abandoned by petitioner in the related case.

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[4]The order does not appear on the Ninth Circuit docket (Resp. Exh. C).

ARGUMENT

Petitioner has been involved in two separate cases arising out of the MFC bankruptcy reorganization. The first is the overall matter of the confirmation of the plan of reorganization (Ninth Cir. Dkt. No. 85-2692). It included petitioner's constitutional challenges to the plan of reorganization and, necessarily, to Act 187 on which the plan was grounded. The reorganization plan case terminated by stipulated dismissal in December 1985.

The second case is the matter of petitioner's indebtedness to MFC on the promissory notes (Ninth Cir. Dkt. No. 84-2807). It is this simple promissory note case which is now before the Court.

With this bifurcated background, it is clear that the petition for a writ of certiorari should be denied for the following reasons:

1. Petitioner is attempting to resurrect by means of a petition for a writ of certiorari in the promissory note case the same constitutional attack on the reorganization plan which he previously raised and then voluntarily dismissed in the reorganization plan case. The questions presented by petitioner in support of the petition for certiorari appear to be a restatement of the precise questions cited in the notice of appeal from the order confirming the plan of reorganization (State of Hawaii App. B). The Ninth Circuit summarily affirmed the confirmation of the plan and, thereafter, petitioner neither requested rehearing by the Ninth Circuit nor petitioned for a writ of certiorari to this Court (Resp. Exh. C).

2. Respondent was empowered to attempt collection on the promissory notes executed by petitioner without regard to Act 187 or any other statutory enactment of the State of Hawaii. In 1983, respondent's authority to collect

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on the promissory notes was derived from 11 U.S.C. §323,[5] 11 U.S.C. §541,[6] and Bankruptcy Rule 6009.[7] Specifically, the property accruing to the estate under section 541(a)(1) included all rights of action of the debtor arising out of a promissory note or contract. 4 *Collier on Bankruptcy*, ¶541.10[5] (15th ed. 1986).

3. Petitioner contends that Act 187 is "new evidence" which justifies issuing the writ (Pet. at Question Presented and p. 4). This contention is both irrelevant and erroneous. It is irrelevant to this case, the promissory note case, because respondent's authority to undertake collection on

---

[5]At all times relevant to this case, 11 U.S.C. § 323 provided:

> Role and capacity of trustee.
>
> (a) The trustee in a case under this title is the representative of the estate.
>
> (b) The trustee in a case under this title has capacity to sue and be sued.

[6]At all times relevant to this case, 11 U.S.C. § 541 defined the property of the estate, in pertinent part, as follows:

> Property of the estate.
>
> (a) The commencement of a case under section 301, 302 or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:
>
> (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case. . . .

[7]Bankruptcy Rule 6009 provided:

> Prosecution and Defense of Proceedings by Trustee or Debtor in Possession.
>
> With or without court approval, the trustee or debtor in possession may prosecute or may enter an appearance and defend any pending action or proceeding by or against the debtor, or commence and prosecute any action or proceeding in behalf of the estate before any tribunal.

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the notes predated Act 187 and was not enlarged or even affected by it. It is erroneous because, even in the context of the reorganization plan case, Act 187 predated the plan; predated petitioner's objection to the plan; predated the notice of appeal from confirmation of the plan; and predated the stipulation of dismissal of the appeal.[8]

In short, petitioner is attempting to exhume the corpse of the reorganization plan case for viewing in the promissory note case. For this reason, the Court need not address the merits of the petition and need not adjudge the petition against the Rule 17 considerations governing review on certiorari.[9]

[8]It is further erroneous because, even if Act 187 were somehow relevant to the promissory note case – which it is not – it was not "new evidence" which could have been raised for the first time – as petitioner did – only on the petition for rehearing. It could earlier have been brought to the Ninth Circuit's attention pursuant to Fed. R. App. P. 28(j).

[9]As to these matters, respondent adopts and relies upon the brief of the State of Hawaii in opposition to the petition for certiorari.

CONCLUSION

If the issues which petitioner is attempting to raise by means of the petition for a writ of certiorari are relevant to anything, they are relevant only to the related case which was dismissed over a year ago by the Ninth Circuit without further action by petitioner. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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January 2, 1987

APPENDIX

HIROTOSHI YAMAMOTO, pro se
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

In Re 84-2807

MANOA FINANCE COMPANY, INC. a Hawaii corporation,	BK. NO. 83-00065
Debtor	ADV. PROCEEDING NO. 83-0222
CHARLES R. KLENSKE, Trustee in Reorganization,	NOTICE OF APPEAL FROM ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT
Plaintiff	
vs.	Certificate of Service
HIROTOSHI YAMAMOTO, et al	
Defendants.	

NOTICE OF APPEAL FROM ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

I, HIROTOSHI YAMAMOTO, hereby give Notice of Appeal to the UNITED STATES COURT OF APPEALS for the NINTH CIRCUIT, from the Order Granting Plaintiff's Motion for Partial Summary Judgment, dated November 13, 1984, and signed by the Honorable Samuel P. King, District Court Judge.

My appeal is based on the following:

1. The "form" of the transactions cited belie their true "substance." The transactions were not de facto loans, but were *advances* made for the sheer survival of Manoa Finance Company under the pressure of the arbitrary, and discriminatory 10 to 1 debt to capital ratio required by the State, for industrial loan companies *only*.

2. The patent existence of a conflict of interest of the presiding District Court Judge in the Adversary Proceeding, who is also the Administrative Judge in the bankruptcy proceedings, denying defendant the assurance of a fair and impartial trial.

3. The patent breach of fiduciary trust of plaintiff, who had obtained judgment with a "lack of clean hands."

DATED: Honolulu, Hawaii, December 11, 1984.

/s/ Hirotoshi Yamamoto
HIROTOSHI YAMAMOTO, pro se

FILED
UNITED STAES BANKRUPTCY COURT
DISTRICT OF HAWAII
DEC 11 1984
at 3 o'clock and 10 min. p.m.
DOROTHY K. IPPONGI, CLERK

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

(N/S 3/420 Trustee). CIVIL. DISTRICT OF HAWAII

In re: MANOA FINANCE COMPANY, INC., a Hawaii corp.
Debtor.

CHARLES E. [sic] KLENSKE, Trustee in reorganization,
Plaintiff-Appellee,

v.

GEORGE W. H. GOO; ROBERT S. TERAMOTO, et al.,
Defendants,

and

HIROTOSHI YAMAMOTO,
Defendant-Appellant.

Prev. Rel to: 83-2361 & 83-2371 (42(b, [sic] FRAP
Rel to: 84-2337 & 85-2692

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(SEE CLK'S CARD FOR ADD'L COUNSEL)

DATE	FILINGS-PROCEEDINGS	CLERK'S FEES	
		APPELLANT	APPEL
1984			
Dec. 31	DOCKETED CAUSE AS OF 12/14 AND ENTERED APPEARANCES OF APPELLANT IN PRO PER; COUNSEL FOR APPELLEE. ogm	$65	
1985			
Feb. 4	FILED AS JANUARY 21, 1985 CERTIFICATE OF RECORD (1/16/85) mb		
Feb. 4	APPELLANT'S OPENING BRIEF IS DUE MARCH 18, 1985. mb		
MAR. 20	Filed Orig & 15 Aplts opening brief w/5 Excerpts of record. (27p) 3/18 -vt-		
Mar. 29	Filed as of 3/28, Appellee's Ex-parte motion for first ext of time to file answering brief to & including May 15, 1985. (CIVATT) 3/27 ogm		
April 9	Filed order (SNEED) aple's mot. for an ext. of time until May 15, 1985, to file his answering brief is granted. Absent extraordinary circumstances, no further extension of time will be granted. tsp (4/9)		
MAY 17	Filed Orig & 15 Aple briefs w/5t Suppl Excerpts of record. (42p) 5/15 -vt-		
MAY 22	FILED AS OF 1/21 CERT. TRANSC. OF RECORD ON APPEAL IN TWO VOLUMES: VOL. I. PLDGS, VOL. II, ORIG R/T'S. -vt-		
June 3	Filed Orig & 15 Aplt's reply briefs (7 pgs). 5/28 ogm		
Oct. 28	Recvd Ltr dtd 10/23 from aple's counsel (Fujiyama, Duffy & Fujiyama) re: will not appear at oral argument. (Panel) tsp		
Nov. 05	Filed Appellant's Pre-Trial Statement (Yamamoto). (Panel) dmd		

NOV. 12 Filed Aple (manoa [sic] Finance Co.,) Emergency motion for consolidation of pending appeals & motion for summary affirmance, etc., with points & authorities in support. (panel) -vt-

NOV 12 Filed order (SKOPIL, FLETCHER & ALARCON) Aple's emergency motion for consolidation of this appeal with No. 85-2807 is denied. -vt-

Nov. 13 Filed as of 11/13 aplt's opposition to aple's emergency mot. for consolidation of pending appeals and mot. for summary affirmation of order confirming Chapter 11 Plan of reorganization. (11/12) (Panel) tsp

Nov. 19 ARGUED & SUBMITTED TO: SKOPIL, FLETCHER, ALARCON, CJJ. gb

1986

FEB 04 ORDERED OPINION (PER CURIAM) FILED & JUDG. TO BE FILED & ENTD.

FEB 04 FILED OPINION – AFFIRMED.

FEB 04 FILED AND ENTERED JUDGMENT. -ot-

Feb. 20 Filed aplt's petition for rehearing & suggestion for rehearing en banc. 02/14 (Panel & Active Judges) -ot-

Feb. 21 Filed aple's bill of cost. 02/18 -ot-

June 24 Filed Order (SKOPIL, FLETCHER & ALARCON, CJJ) the petition for rehearing is denied and the suggestion for rehearing en banc is rejected. tsp

JUL. 08 1986 MANDATE ISSUED COSTS TAXED

Jul. 10 Filed as of 07/07, aplt's notice to appeal to the SC. 07/01 -ot- (CIVATT) 07/30 -ot-

Jul. 14 Filed as of 07/10, aple's request for atty fees. 07/08 -ot- (CIVATT) 07/30 -ot-

Jul. 21 Filed aple's supplemental application for attys fees. 07/18 -ot- (CIVATT) 07/30 -ot-

Oct. 3 Filed Order (SKOPIL, FLETCHER & ALARCON, CJJ) pltf-aple's request for atty's fees is denied. tsp

Oct. 20 Rec'd SC notice of filing petition for certiorari on 09/20/86. #86-0558 -ot-

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

(N/S 3/420 Trustee). CIVIL. D.C.: HAWAII

In re: MANOA FINANCE COMPANY, INC., a Hawaii corp.
Debtor.

CHARLES E. [sic] KLENSKE, Trustee in reorganization,
Plaintiff-Appellee,

vs.

GEORGE WH. [sic] H. GOO; ROBERT S. TERAMOTO, et al.,
Defendants,

and

HIROTOSHI YAMAMOTO,
Defendant-Appellant.

Rel to: 84-2807

For Appellee:

James J. Feder, Esq.
JONES, DAY, REAVIS & POGUE
2029 Century Park E., #3600
Los Angeles, CA. 90067
213-553-3939

For Appellant:

Hirotoshi Yamamoto
85-175 Farrington Highway, B-426
Honolulu, Hawaii 96792

SEE CLERK'S CARD FOR ADDITIONAL COUNSEL

DATE	FILINGS-PROCEEDINGS	CLERK'S FEES	
		APPELLANT	APPEL

1985

OCT. 21 DOCKET NUMBER ASSIGNED. cmk $65

OCT. 22 DOCKETED CAUSE & ENTERED APPEARANCES OF COUNSEL. cmk

OCT. 22 SENT APPELLANT CIVIL APPEALS DOCKETING STATEMENT. cmk

Oct. 31 FILED APLT'S C.A.D.S. (10/29) (CONFATT) dmd

NOV. 12 Filed in 84-2807 Aple (Manoa Finance Co.,) emergency motion for consolidation of pending appeals & motion for summary affirmance, etc., with points & authorities in support. -vt- (CIVATT FOR ADD'L RELIEF)

NOV. 12 Filed in 84-2807 order (SKOPIL, FLETCHER & ALARCON) Aple's emergency motion for consolidation of this appeal with No. 85-2807 is denied. -vt-

Nov. 14 Filed CERTIFICATE OF RECORD (11/5) dmd

Nov. 21 Recvd ltr dtd 11/18 from aple re: caption onf 11/12 court had the wrong case caption. (CIVATT) tsp

Dec. 9 Filed aple's emergency mot. to dismiss appeal of affirm. (12/6) (CIVATT) tsp

Dec. 13 Filed Stipulation of Dismissal

DEC 17 1985 Filed entry of dismissal per 10(b) WMP

Case Closed 1/10/86

/s/ Dave Domg, Deputy Clerk
for Clerk, U.S. Court of Appeals

APPENDIX D

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF HAWAII

In Re	) BK. NO. 83-00065
	)
MANOA FINANCE COMPANY, INC., A Hawaii corporation,	) MEMORANDUM) IN SUPPORT OF) OBJECTIONS TO
Debtor.	) TRUSTEE'S PLAN OF) REORGANIZATION
	)
CHARLES R. KLENSKE, Trustee in Reorganization for MANOA FINANCE COMPANY, INC.,	)
Plaintiff,	)
vs.	)
HIROTOSHI YAMAMOTO, GEORGE W.H. GOO, ROBERT S. TERAMOTO, MASAYUKI TOKIOKA, SHIZUKO YAMAMOTO, SAKAE TAKAHASHI, ELIZABETH TAKAHASHI, MAKAHA LAUNDRY,INC., MAKAHA REEF, INC., TAKAHASHI-YAMAMOTO JOINT VENTURES, SSK INVESTMENTS, INC. and ASIAN AMERICAN MEDICAL CLINIC OF SAN FRANCISCO,	)
Defendants.	)

MEMORANDUM IN SUPPORT OF OBJECTIONS TO TRUSTEE'S PLAN OF REORGANIZATION

Comes now HIROTOSHI YAMAMOTO, by and through his attorneys, UKISHIMA & MATSUBARA, and respect-

fully submits the following Memorandum in support of his objections to the Trustee's Reorganization Plan.

* * *

2. The Reorganization Plan Unfairly And Inequitably Enriches Thrift Guaranty Company To The Detriment Of Stockholders

Even should this Court not take the assessed value as assigned by the Trustee, it is clear that the assets of Manoa Finance Company are worth far more than the proposed sale price of $27.5 million. This Court should not approve the sale of assets to Thrift Guaranty Company for only $27.5 million. Selling the assets of Manoa Finance Company to Thrift Guaranty Company for that amount would result in a windfall for Thrift Guaranty Company. Thrift Guaranty Company is already under an obligation to pay off the depositors of Manoa Finance Company regardless of whether Manoa Finance Company has any assets or not. The sale to Thrift Guaranty Company would be awarding Thrift Guaranty Company for something it already is obligated to do. If anything is sold to Thrift Guaranty Company, the assets sold to them should only be enough to pay Thrift Guaranty Company for any monies that it has advanced to Manoa Finance Company.

Especially unfair under the reorganization plan is the provision that even after the payment of all claims, any surplus remaining out of the $27.5 million paid to Manoa Finance Company by Thrift Guaranty Company will be returned to Thrift Guaranty Company. Manoa Finance Company would, under the plan, sell $27.5 million of assets to Thrift Guaranty Company for $27.5 million in cash. It is patently absurd, unfair and inequitable to return any surplus remaining from the $27.5 million to Thrift Guaranty Company after the claims have been paid off,

because Thrift Guaranty Company would have already received more than full value for its money. If any surplus remains after all the claims have been paid, it should go to the stockholders and not Thrift Guaranty Company. (Trustee's Memorandum of Points and Authorities in Support of Motion for Order Authorizing Filing of Plan Combined with Disclosure Thereon, filed August 19, 1985, pages 5-6).

3. The Reorganization Plan Incorrectly Determines The Value Of Manoa Finance Company's Assets

Finally, the Trustee has magically assessed and discounted the price for all the assets of Manoa Finance Company to $27.5 million, the exact price Thrift Guaranty Company is willing to pay for the assets of Manoa Finance Company, and also exactly what is needed to pay off all creditors of Manoa Finance Company, aside from inside creditors and stockholders. The Trustee gives no information as to how he has arrived at the price. He states that some properties may not be valuable and some of the receivables may not be collectible until a later date. He gives no formula or breakdown to show how he devalued * * *